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Notes on Law
taken from the Lectures of
The Honble Judge Reeve
and
James Gould Esquire
Vol. 4th

Containing the following
Titles —

1. Bills of Exchange & promissory notes,
2. Insurance, Mortgages &c
3. Charter parties, Partnership &c
4. Factors and agents &c
5. Sailors Contracts &c

} Lex Merc^a

6 Powers of Chancery,
7. Criminal law.

V4

Office

Lex Mercatoria

Book I. Of Contracts and Bargains

Notes.

Respice quid mercant [illegible]

[illegible]

[illegible]

But particular customs are always found by the inquest except those of Bargain & Sale which the judges assume as well established as the force of the inquest.

[illegible]

[illegible]

[illegible]

[illegible]

The person who makes the bill or drawer, is called the drawer. The person to whom it is addressed is called before acceptance, the drawee, afterwards, the acceptor. The person for or to whom it is made payable is called the payee; and if he direct the contents to be paid to a third person, that third person is called the indorsee and the payee becomes indorser. The [illegible] for the time being is called the holder.

Whoever is liable for the amount [illegible] substantially [illegible] [illegible] drawer or payee [illegible] [illegible] supposed to be [illegible] with the assistance of the drawer.

Bills of exchange & promissory notes are distinguished from common contracts or written agreements by being negotiable. Whenever [illegible] are [illegible] [illegible] principle [illegible] bills of exchange.

Now it becomes important to ascertain when instruments are said to be negotiable, and when they are not.

A negotiable instrument is one in which the [illegible] is equitably [illegible] [illegible] to a third person who [illegible] in his own name. This is the distinction between

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negotiable instruments are an exception.

The equitable interest of a bond &c may be assigned but the legal interest is not transfer'd. There is an essential difference between the assignmt of a legal & of an equitable interest.

When the legal interest is assignable, the assignee may maintain an action in his own name, since he is entirely out of the contract of the original parties.

But where the equitable interest merely is
7 T.R. 243. assignable the assignee can only bring an
3 B.&P. 182. action in the name of the original party
[illegible]
5 V. 683.
1 H.Bl. [illegible] and takes it subject to the equitable claims
[illegible] of the other party, even to the control of the assignor.

This negotiability of instruments is opposed to the rule of the common law in relation to choses in action, which generally prohibits assignment on the ground that they encourage litigation. The reason of the common law rule is that the legal interest in the debt remaining secured by the instrument cannot be transferred.

265. Hence so far as this rule extends, it follows
[illegible] that no instrument is assignable
2 T.R. 413. that the assignee of a chose in action cannot
1 Wils. 24
[illegible] 108 maintain an action in his own name.
This is the rule with regard to bonds &c

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Bull. N.P.

[illegible] a promissory.

It has also been determined that the opinion of a board, having become functus officio, [illegible] 1 B.R. 109

still nevertheless can obtain in his own name for the use of the officers — as in other cases, the officers may make use of his name to recover the money. Qy? the law must obtain and maintain [illegible] the [illegible] since [illegible] [illegible]

Lord C.J. has been determined that in an action on a bond, given to the sheriff in trust for [illegible] 1 Bl. 482 [illegible] 4 B. 481 [illegible] Bef. 11 222 [illegible] 1 T.R. 652 [illegible] Tyrr. 38 [illegible] Burr. 5 [illegible] Cut. 307 [illegible]

I should here observe that the assignability of foreign bills of exchange or any [illegible] Cit. 7 [illegible] in the 16th century and [illegible] in the 17th.

This law with regard to the common [illegible] in order to the [illegible]

Secondly, in all actions on [illegible] 1 Bos. & Pul. 351. the plt must prove a regular [illegible] Tyrr. 45 [illegible] in order to [illegible]

But in actions on Bills of Exchange [illegible] they are not [illegible] it is [illegible] [illegible] only for the pltff to prove that he gave a consideration for the bills.

Thrl. 48
2 T. R. 245
2 Ld. R. 758.
1 Bl. R. 487
Bayl. 70.
Chit. 75.
115. 6. 485

In this respect these bills of exchange have [illegible] [illegible] [illegible] of which it [illegible] [illegible] [illegible] that [illegible] [illegible] [illegible] [illegible]

The same rules in general apply to promissory notes as to Bills of Exch.

To the rule above laid down there is an exception when the pltff claims as bearer of a bill transferable by delivery, and under suspicious circumstances. If, for example, the payee or indorsee has lost a bill and a third person claims as holder he will be required to show that he or some intermediate holder paid a valuable consideration for it.

2 Bur. 5 6. 523.
2 Low 235.
Chit. 9. 57. 201. 219.

This exception is founded on the highest reason, [illegible]

But this exception cannot hold as to the original payee, or to an indorsee, for these appear on the bill itself to be entitled to recovery. Because [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Bills of Exchange.

[illegible]

[illegible]

[illegible]

Bills of Exchange are of two sorts — Foreign and Inland.

Foreign bills are those which are drawn in one Country & payable in another. Inland bills are those payable in the same Country.

Bankers Books are accounts upon bankers are drawn in form. The letters of credit are bankers drafts upon bankers to bearer and are of course negotiable in mercantile way.

These instruments are negotiable like bills of exchange. It was formerly doubted whether they were negotiable, but the law is now settled. They are not payable without demand. Drawer in each case offers proof that [illegible] which are usually [illegible] on a [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

Further it has been contended [illegible]

[illegible]

Of the Parties to Bills of Exchange.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Bills of Exchange [illegible]

The principal parties to a bill are usually three — the drawer, the drawee, and the payee. [illegible] [illegible] that the parties to a bill of exchange are sometimes four.

Chitt. 22
Bayl 2. 3.

[illegible] [illegible] [illegible] a bill, [illegible] [illegible] in fact?

It is not necessary however that there should be three persons distinctly named, for one person may act in two different characters. The person who draws a bill payable to himself or his order, — or he may draw a bill on himself payable to another person or his order.

[illegible] 30
[illegible] 24
[illegible] 8.
Chit 48

Indeed there may be a case of a bill with but one actually party in the case [illegible] — a person may draw a bill on himself payable to himself or his own order. Now in [illegible] the bill [illegible] [illegible] the three characters. [illegible]

[illegible]
[illegible] 28.
[illegible] 579.

[illegible] [illegible] [illegible] [illegible] a bill [illegible] [illegible] [illegible]?

The man who becomes a [illegible] to a bill by accepting it for the honour of the drawer or indorser, [illegible] [illegible] to be [illegible]

[illegible]

[illegible]

[illegible]

[illegible] 9. 52. 2
East. 24

[illegible]

[illegible]

Bum. 2. 4.
1. 8. 6.
T. Mod. 56

[illegible]

[illegible]

3 Term. 757.
Esp. N.P.
1. 7. 591.
3 Term. 555
C. Eq. 612.

[illegible]

[illegible]

[illegible] 21
[illegible] 514.
3 Term. 313.
[illegible]
[illegible] 2555.

[illegible]
64
[illegible] 118
Cr. El. 26

[illegible]

[illegible]

Bail an agent who is authorized to accept [illegible] cannot call on the authority to another unless he is expressly authorized to do it. It is a general rule of the common law, that a rep-

reservation of a matter commonly [illegible]
power by proviso.

[illegible] accepting, as it does, [illegible] a
bailee, the appointment and [illegible] the
of the principal. [illegible] the second clause
[illegible] the principal's [illegible] [illegible]
[illegible] the [illegible] appointee [illegible]
[illegible] of [illegible] [illegible]

The [illegible] appropriation [illegible]
is [illegible] [illegible] attorney.

[illegible] joint [illegible] [illegible]
[illegible] in the [illegible] of both [illegible] of the [illegible]
[illegible] both of the [illegible] [illegible] other [illegible]
[illegible] purpose, each of the parties is [illegible]
appointed for the whole partnership.

[illegible] that the [illegible]
[illegible] concerned only his [illegible] in the
[illegible], will not bind the whole. This rule however
appears to be questionable, as [illegible]
other principles, that the [illegible] will bind the
partnership, if the [illegible] of the bill also [illegible]
[illegible] that [illegible] concerned the [illegible]
interest of [illegible]. But this [illegible] to be reasonable.
[illegible] by [illegible] into [illegible]
each partner [illegible] [illegible] to the [illegible]
[illegible] third person [illegible] be [illegible]
the [illegible] of the [illegible]
[illegible]

Bills of Exchange &c.

[illegible]

It seems however that two persons by making a bill payable to their order make themselves

Mitch. Inst. 253. Doug. 553. Pothier R. 16. Dict. 24.

joint parties as to that transaction. Thus action, so that the endorsement of one, in the name of both, would be sufficient to transfer the interest.

[illegible] is [illegible] a corporation, an acceptance by one of the members would not bind the corporation, unless he was especially authorized so to do. For the individuals who constitute a corporation are not as such responsible in the law. The corporation being a legal entity, [illegible] be bound by a corporate act.

When one partner draws a bill for his own sole use, he should draw it for

Salk. 25. 2 Str. 1175 14 Eas. Doug. 65. Dict. 375

himself or the other as in the usual form; for it is extremely doubtful, according to the English decisions, whether the partnership would be liable. In 2nd and 3rd cases the firm would otherwise, provided the mark on bill was discovered, a partnership debt.

[illegible]

[illegible]

[illegible]

[

20. Bills of Exchange &c &c
of a consideration.

These requisites are reality and delivery. The first
3 Wils. 213 is that the instrument be founded on real
2 Bl. R. 1170. credit, and not given in consideration. The
5 T.R. 485 second is that the bill be drawn for
7 B. 241 money only, and for money, or money's
N.P. 23. worth. The third is, that it be
4 T.R. 151. 127. payable absolutely and not upon any
contingency whatever.

It is frequently mentioned as an additional
requisite, that the bill must not be
given for some base or illegal consideration. This name
5 T.R. 485 is only an example under the first or
8 Wils. 213 second head of requisites of this description.
Bing. 325
Ex. 151. For a mere gaming or other illegal
Esp. 50. consideration
This paper credit, and consequently its transferable
character, would be greatly prejudiced if such
transactions were to be supported and recognized.

Upon the same reason if a material
alteration in the form of a bill is made, fraudulent
and by a stranger, it will not be
received as a transferable security. It will not be
2 Ld. Ray. 1562 Wils valid. If the bill is not accepted, it is
1563.
2 Wils. 207 it matter, it never was.
Ld. R. 752.
Str. 592.
151. 211
4 T.R. 348
1 Esp. 250.
If money then is paid on a mere accepted
bill it is the drawee.

Some doubts have been expressed that
you can indorse an order or transferable
security, unless it be declared on as a bill

between the original parties though it is not 7 T.R. 243.
negotiable. Thus from this practice none of Chit. 53. 48
the evils or embarrassments which were men- 5 T.R. 485.
tioned can ensue. I can see there can be no 6 T.R. 123. 2 Bl. R. 1272.
harm in the rule, though it has been doubt- Kyd. 54. 55.
ed.

But to the general rule that an instru-
ment to become a bill must be [illegible] x Pr. 24
negotiable there is an exception [illegible] 1 Wils. 262.
[illegible] in which payment is to be made, Bulle. 272. Kyd. 57.
is probability, not morally certain [illegible]
respects [illegible]. [illegible]
[illegible]
[illegible] of public [illegible]

Thus if the event on which the bill is pay-
able is one which must inevitably hap-
pen at some future time, though uncertain
it will be negotiable — as if it is made pay- Pr. 1217.
able 6 months after the death of A, — or after 1 Burr. 226.
an infant attains full age, and is uncertain Kyd. 57.
[illegible] the time when he will attain full age. Chit 33-4
In the latter case the instrument is con-
sidered as payable at the time when he
would attain full age though he die in
[illegible]

But [illegible] a bill [illegible] payable
when [illegible] and the

Str. 762. mentioning of a particular fund merely by
2 Ra. 1481 way of direction to the drawee how he
Bardw. 12. Dougl. 571 may reimburse himself & [illegible] [illegible] [illegible] to
[illegible] the drawee 6 months after date, to pay [illegible]
[illegible] [illegible] my half pay [illegible] [illegible] [illegible] was holden good.

The rule is the same as to words inserted in the bill for the purpose of pointing out the consideration of acceptance. For there though a fund is named [illegible] [illegible] [illegible]
2 Ra. 1545 [illegible] [illegible] [illegible] [illegible] the [illegible] of the [illegible].
T. R. 733.
Salk. 24. But where a bill was drawn [illegible] [illegible] [illegible] [illegible] pay such a sum as [illegible] [illegible] [illegible] be received out of my ~~estate~~ in A. the bill was holden to be [illegible] because the fund was only mentioned to shew whence the [illegible] [illegible]

The second requisite is that [illegible] [illegible] be drawn payable in money only. Since
Chitty 38. an order [illegible] [illegible] is no bill of
[illegible] 53 [illegible] [illegible] [illegible] [illegible]. The bill of exchange was devised for the purpose of [illegible] [illegible] [illegible] of money and [illegible] [illegible] [illegible] [illegible] [illegible]. Were the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] him, to [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

24. [illegible]

[illegible]

[illegible]

[

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

will not proceed to part from [illegible]

[illegible]

[illegible]

[

[illegible]

[illegible]

[illegible]

there may be a recovery in between the indorser & the holder. For the indorser was not the person intended to be protected by the statute and hence the evil intended to be prevented is not thus let in. [illegible] 55. Dougl. 713. 716.

There is an important difference between a common law prohibition and a statute prohibition. Both are made with the intention of justice & for the prevention of dishonesty, & their operation is [illegible] alike. First, the indorser [illegible] Chit. 52. [illegible] from him and from whom [illegible] received the bill.

Now it is very true that where the bill [illegible] the [illegible] necessarily relies on the credit of him from whom he received it.

On the other hand, if a bill which is void [illegible] 1 Camp. 94 8 T.R. 390 [illegible] are meant to be protected.

[illegible]

[illegible]

[illegible]

[illegible] Beam. 11. 25.
[illegible] 2 Litt. 37.
[illegible]

[illegible] must be ascertained from the custom of merchants in that place.

[illegible]

[illegible] Ibid. 11.
[illegible]

Delivery &c.

[illegible] Com. Dig. Merch. E. 17.
[illegible] 2 Bos. & Pul. 557.
[illegible] 5 Esp. 73. Park. 100.

[illegible]

Attornation.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Bowell 194. Ont. C.

[illegible]

[illegible]

Obligation incurred by the Drawer.

[illegible]

[illegible] 1 Esp. R. 378
Bayley 7.
Bills 127
Chit. 13-4
74-2.

[illegible]

[illegible] 7 B. & C. 450.
Esp. R. 447
3 B. & P. 7.
Chit. 127
109.

[illegible]

Bem. 400
Eb. 7 [illegible] 70
Dowst. 56
Bilt. [illegible]
1 Bin. 187
2 [illegible] 287
2 [illegible] 127
2 Wh. 18-17

not a crime. The [illegible] is liable to the amount of the bill & in some cases to interest and costs.

[illegible]

Bem. 400
Hob. 150 117
[illegible]
4 [illegible]
Bilt. 54

[illegible] Though the drawer is [illegible] liable on the [illegible] to receive [illegible] payment or presentment the bill. This was decided in a case where payment was refused by the Bank of England. [illegible] case however [illegible] all these implied engagements in the [illegible] drawer [illegible] [illegible] happen. [illegible]

[illegible] the holder to the benefit of these engagements he must do his part — These presentments are [illegible] he must present at the proper time.

In some cases presentment for acceptance is absolutely necessary — and in all cases it is expedient, if the bill was received in the [illegible] regular acceptance.

Where the bill is payable at a [illegible] place a presentment is necessary. [illegible] it will [illegible] [illegible] payable

6 [illegible] 5
6 [illegible] 5
[illegible]

[illegible] though it is not necessary, [illegible] to the holder to prevent his [illegible]

[illegible]

[illegible] effects of the drawee in his hands. [illegible] by showing that the drawer was a bankrupt [illegible] to be [illegible].

[illegible] where it appears that the [illegible] has been injured by the holder's neglect to present. Suppose then that the bill [illegible] the holder [illegible] drawee, [illegible] may excuse his neglect to make present-ment, by showing that the drawer [illegible] had no effects in the hands of the drawee, or had given no consideration for the bill, or any other circumstances, which will afford an inference that he could not have been injured by the holder's laches. [illegible]

[illegible]

Time of Presentment.

[illegible] with the time of presentment [illegible]
[illegible] is fixed the drawer [illegible] are [illegible]
[illegible] the [illegible] and the [illegible]
7 T R 25 [illegible]
[illegible] other [illegible] of the case
[illegible]

[illegible] the [illegible] as [illegible]
Chit 7-8 [illegible]
[illegible] the [illegible]
[illegible] for the [illegible] circumstances.

A bill payable at sight must be presented, or negotiated within a reasonable time

Presentment should always be made in the
Chit 25
Chit 7-8 [illegible]
[illegible]

[illegible] the [illegible]
[illegible] the [illegible]
[illegible] the [illegible] other [illegible]
Chitty 22 [illegible] the [illegible]
[illegible]
Bayl 126 [illegible] the [illegible]
Chit 70-72 [illegible]
the State of accounts between him & the drawer
& if he does not accept it within that time
it is considered as [illegible]

But though it is usual to have the bill [illegible]
with the witnesses yet he should particularly in certain
[illegible] of the court, by which notice of witnesses [illegible]
is to be given, & [illegible] in the usual time.

Com. Dig. Pleadings 2 E. 2. 2 Lil. 70.

If the witnesses is not to be found at the place
mentioned in the bill and upon [illegible] [illegible]
or [illegible] there [illegible] the bill
is considered as [illegible]. But this is [illegible]
the [illegible] which, as was before remarked,
[illegible]

1 Dispatch. 510. Dig. 7 Ch. 3. Ch. 12 — 5 Ch. 12 — Dyx. 125 — 127 Lil. 79 — 80 Ch. 36

But if the witnesses [illegible] resided in the place
[illegible] [illegible] be recorded [illegible]
[illegible] to another place [illegible] the bill should be [illegible]
[illegible] at the place to which he has removed, unless
it be with the [illegible] or [illegible] the [illegible].

Ch. 23. 1 Ch. 1. 54. Lil. 79. 85

And the [illegible] should always be made
if possible to the witness himself.

That if he cannot be found by due diligence
it is sufficient to [illegible] it at his dwelling
place.

If the witness is [illegible] [illegible] should
be made to his person or representative.

Lil. 46 Lil. 79 — 92

If it is to be found within a reasonable dis-
tance [illegible] [illegible]
[illegible] [illegible]

[illegible] is a reasonable allowance, it [illegible]
is a question of law, upon the [illegible] [illegible]

[illegible]

[illegible] within a reasonable time [illegible]

[illegible]

Acceptance.

Chit. 7.–6 200 Acceptance is the act of engaging to comply with the request contained in the bill. That is, it is an engagement to pay it. And this acceptance may be either in writing or in parol.

Acceptance by the agent of the drawee is binding on the principal. But the agent Chit. 122. 123. if required must produce his authority to the holder or he may consider it as dishonoured. Beaw. Pl. 87. 1. Esp. R. 5. 269. And it seems to be questionable whether the holder is at all bound to acquiesce in an acceptance by the agent, for it multiplies his necessary proof, and may subject him to litigation.

Acceptance by one partner, binds all the company. But if a bill is drawn on Bul. 228 two persons who are not partners, and ac- Holt. 297 cepted by one for both, the other is not bound Beaw. 228 Chit. 29. 2. and the bill may be considered as if dishonoured; for though when two persons not partners join in drawing a bill the act of one will not bind both, yet in this case there is no act of [illegible]

[illegible]

[illegible]

If the drawee is found to be an infant or feme covert the bill may be treated as unaccepted, because [illegible] [illegible] honoured. Chit. 69. 71. 72.

So also if the drawee is in any way incapable of binding himself by his acceptance or the drawing [illegible] of the drawer (from [illegible] [illegible])

And a promise to accept in future, may operate as a present acceptance, according to the [illegible]. Thus when the drawee said "Leave the bill and I will accept it" it was held to be a present acceptance. For the words give a credit to the bill and it would be [illegible] pernicious destructive to trade to be said in commercial [illegible] if they could be afterwards retracted. 1 Atk. 4. 5 East 514. Bul. 270 1 Camp. 572 3 Burr. 1663 [illegible] [illegible]

Hence it is a general rule that an unconditional promise to accept in future is an acceptance in present. "[illegible] [illegible]". 3 Burr. [illegible]

Even a promise to the drawer to accept a bill to be drawn in future is binding [illegible] [illegible] the circumstances which have induced [illegible]) [illegible] [illegible] [illegible], (as the drawer [illegible]. East [illegible] 7 [illegible] [illegible] Bean [illegible] Atk. [illegible] 3 Burr. 1669)

[illegible]

[illegible]

[illegible]

But [illegible] the acceptance [illegible] by the [illegible] [illegible] 23. [illegible] 4 [illegible] 1 [illegible] 2. [illegible] is [illegible] to accept [illegible] the acceptor [illegible] [illegible] 1 [illegible] 2.

If the drawee [illegible] in [illegible] with an acceptance [illegible] [illegible] Stra. 214 [illegible] 23. [illegible] 11 [illegible] 1212 [illegible] 452. 2 Mod. 9. [illegible] 1 [illegible] 182.

[illegible]

Bills of exchange [illegible] a question of [illegible], and not of fact. [illegible] [illegible] [illegible]

An absolute acceptance is an unconditional [illegible] [illegible] 2 [illegible] 1 [illegible] 2.

[illegible]

[illegible]

Eub. 7. 2. [illegible] "accepted" with the assent of the assembly subscribed. But it means to allow the writing the word "accepted" without [illegible] [illegible] "accepted" [illegible] "signed".

Where a bill is made payable in or to the
Ma. 174. Com. R. 75. particular it must be by the acceptance or else
[illegible] payable [illegible] [illegible]
place in the letter is not [illegible] to acceptance
in it should be with [illegible] [illegible]
The reason of this rule is obvious. When the
obligation is to pay generally in the City of London
[illegible] the acceptance is [illegible], it
an engagement [illegible] to pay in the City of
London, and if the drawee does not [illegible]
[illegible], it might [illegible] [illegible]
[illegible] to pay in the [illegible] [illegible] [illegible]
Pay not at the drawee, is [illegible] [illegible]
[illegible] not [illegible] to [illegible] with the drawee
Comb. 413. Ingram [illegible] [illegible] [illegible]
Nul. 270.
Yeat. 87. Hence the more modern [illegible] of the [illegible] of the [illegible]
Ginn. Ab. Bills
p. 4. [illegible] [illegible] also the words "[illegible]" "presented"
[illegible] the drawee have been holden sufficient [illegible]
[illegible] to pay the bill.
[illegible] a mere [illegible] [illegible] without
[illegible] 569
Eub. 7. 82. consideration [illegible] [illegible] [illegible]
[illegible] the drawee [illegible] the acceptance
the consideration must be inserted [illegible] [illegible]

But a promise to accept which is a fraud or misrepresentation induced the drawer. But this rule I think would be confined to the single instance of fraud to the drawee and shall not affect the interest of a bona fide holder. Chitty. 3 [illegible]

All the inconveniences of the Mercantile law concur to show that this is correct. Otherwise or the credit of commercial instruments would be much impaired. And according to the ordinary principles of the [illegible] I think this is much more consonant to the rule — namely — that he who has suffered himself to be deceived, shall suffer rather than another.

From what has already been said it appears that what a written acceptance need not be on the bill. If it is on a separate paper or contained in a letter it is binding. [illegible] Pr. 5. 8

And an acceptance may be implied. But to constitute such an acceptance there must have been some act or circumstance from which it could be presumed that the holder was induced to consider the bill as accepted. As where the drawee said to the holder [illegible] bill it shall [illegible] 1 Esp. R. 7. 6 Mt 78. 70-7. Hardw. 75. 278. 2 L. 201

[illegible]

[illegible]

[illegible]

&c. from the drawee keeping the bill a great
Bayley 5.276. Chit. 77. length of time and thus [illegible] [illegible]
to [illegible].

Chit. 27. Bayl. 30. [illegible] in general some act with [illegible] must be done
to the bill, [illegible] [illegible] the bill [illegible]
[illegible] will amount to [illegible] no acceptance.

Conditional Acceptance

An acceptance [illegible] to pay the bill [illegible]
[illegible] [illegible] [illegible] is called a
conditional acceptance. But the holder is not
bound to acquiesce in and if he does he
Pet. Mar. Bayl. 41. must give notice of the [illegible] to the
Chit. 82. 74-5-79-87-8. prior parties or they will be discharged.

But whether notice is given to the prior par-
Chit. [illegible] ties or not, the acceptor is bound by it. For ex:
[illegible] when the drawee accepts the bill "accepted
Wh. [illegible] to pay when [illegible] or the [illegible]
Camp. 57. P.R. 82. [illegible]" a promise to accept [illegible],
[illegible] when in [illegible] cash, or to accept [illegible]
[illegible] the drawee shall sell such goods, have
been held to be conditional acceptances. In
these cases the eventual payment of the bill does not de-
pend on a contingency. But on the acceptor's making
Camp. 57. [illegible] P.R. 80. such a conditional acceptance, it becomes absolute
the moment [illegible] [illegible] [illegible] [illegible] [illegible]
contingency happens, when it will take effect.

If the acceptance is according to the conditions in terms [illegible] [illegible] written, or [illegible] [illegible] avail the acceptor against an innocent holder, tho' between the parties, being a mere simple contract, it would be good. Chit. 163. [illegible] 69

Partial Acceptance

A partial acceptance varies from both the former. This is [illegible], an [illegible] acceptance [illegible] varying from the tenor of the bill. [illegible] not an engagement to perform [illegible] but to perform partially, a part of the [illegible] or the whole in some way varying from the tenor of the bill [illegible] [illegible]. Chit. 174. Comb. 451. 1 Mod. 190

The holder [illegible] as also the holder may refuse, but if he is satisfied he must give notice to the prior parties otherwise they will be discharged.

If a partial or conditional acceptance, the holder gives the prior parties notice only of non acceptance generally he waives the acceptance, because the terms that have been [illegible] tend to [illegible] [illegible] will discharge him from [illegible] himself & otherwise since the prior parties are [illegible] by [illegible] [illegible] from the acceptor. Chit. 182. [illegible] 58. 157.

[illegible] acceptance is absolute conditional or partial in [illegible] [illegible].

Bills of Exchange &c.

15 H. 7. 10

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

2 Bro. 1185

2 Str. 1182

[illegible]

2 P. Wms. 502

[illegible]

Hob. 47

Hob. 88

Cro. Car. 23.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] operation here. [illegible] to the [illegible] Exp. Dig. Ch. 5 ch. 95
[illegible] the [illegible] [illegible] seen.

Indeed, acceptance must be wholly or re-
[illegible] by the [illegible], even by parol. Exp. Dig. 85.
Formerly it was held to be seen that the
rule has been introduced into the merchant- Dig. 47. 2. 68.
ile law. For at Com. Law, not even a sealed
contract could be released without deed, after the
right of action had accrued.

Hence it is easily seen that what amounts to an
an express or implied acceptance. Into which the Dig. 47. 2. 68. Exp. Dig. 85.
acceptor is required for the time [illegible]
[illegible] has since been [illegible]
[illegible] of the law. It is now the better opinion
that nothing but an express assent will amount to
a discharge: if so, what is an express assent is a
question of law. And words were used in the [illegible] after the [illegible] 2 [illegible]

[illegible] to the [illegible] a [illegible]
[illegible] Exp. Dig.
[illegible] 85.
[illegible] Exp. Dig. 85.
[illegible]

[illegible] Parol [illegible] the [illegible] to [illegible] the [illegible]
[illegible] the [illegible] [illegible] been considered as [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 2 Ch. 222.
[illegible] 2 Ch. 222.
[illegible] 4 Ch. 222.
[illegible]

[illegible] protest [illegible] pleadings.
[illegible] possibly [illegible] from the rule [illegible]
[illegible] well suited to the [illegible] of the Court.

When a petition is presented to the [illegible]
[illegible] offer [illegible] over the [illegible] 1 Ch. 87.
consideration of acceptance. [illegible] 1 Ch. 98.
[illegible] to take, and [illegible] the bill of the-
ship from the acceptor [illegible] the
acceptance. For since the holder takes away the
consideration of the acceptance it is certainly right
that the acceptance should be at an end.

[illegible] offers or tender of [illegible] with the accep-
[illegible] he would waive the acceptance [illegible] 2 Ch. 87.
[illegible] 1 Ch. 170.
[illegible] acceptance was forced [illegible]
[illegible] the other [illegible] the agreement [illegible]

[illegible] or conditional or partial acceptance
[illegible] 1 Ch. [illegible]
[illegible] equivalent to a general non-acceptance.

[illegible] 2 Ch. [illegible]
[illegible] 2 Ch. [illegible]
[illegible] 3 Ch. [illegible]
[illegible] acceptor [illegible] certain [illegible]
[illegible]

50. Bills of exchange.

The act of acceptance, where there is nothing implied in the terms of it to the contrary, implies that the acceptor has effects of the drawer in his hands.

Beaw. 455.
1 Wils. 185.
Salk. 30.
1 Ld Ra. 88.

If the drawer then or afterwards compelled to pay the bill he may recover of the acceptor, unless the latter can rebut the presumption, by proving the [illegible] ineffective

However the acceptor [illegible] [illegible] in his hands [illegible] [illegible] [illegible] [illegible] [illegible]

D. drawer on B. in favor of C. & B. agrees to accept. Here C. must call on B. before he has any claim upon D. whose engagement is to pay if B. does not.

[illegible]

[illegible] 290. [illegible]

[illegible] — [illegible] it may

Effect of Non Acceptance – duties of the holder in such cases.

[illegible] the acceptance [illegible]

[illegible]

[illegible] 1 Burr. 2670. 1 Salk. 74. Yeates [illegible]

[illegible] in order to the [illegible] the holder [illegible]

[illegible] otherwise they will [illegible]

If a [illegible] parties [illegible] of notice [illegible] that the [illegible] But the [illegible] as being [illegible] in his hands. 1 T.R. 516-9. 3 T.R. 82. 2 N.R. 612. Bayl. 129

If the holder [illegible] it is [illegible] to presume that the [illegible] parties [illegible] expired.

Hence [illegible] the holder [illegible] the [illegible] to the [illegible] in the hands of the drawee

[illegible]

[illegible] the same principles

the same principles is here shifted from the holder

to the drawer

[illegible] the drawer had effects of the drawer

in his hands, the bill that he [illegible]

[illegible] or in the holder, is

no [illegible]. This bill is [illegible]

[illegible]

It is [illegible] the power of a [illegible]

[illegible] a [illegible] of

[illegible] the [illegible] [illegible] [illegible]

[illegible] [illegible] payment; [illegible]

[illegible], and he is now [illegible] to be

entitled to the same principles as other indorsers.

[illegible] that if the drawer has

no effect in the hands of the drawee, he

is [illegible] to notice — [illegible] the [illegible]

[illegible] on the drawer, [illegible]

[illegible] have effect in the drawer's hands.

[illegible] the hands of the drawer [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] the drawer

[illegible] [illegible]

But if the drawer has effects in the hands of the drawee at the time of drawing the bill, the subsequent death [illegible] of the drawee [illegible] want of notice.

The rule is the same in favour of an indorser for a reasonable consideration. He is entitled to notice [illegible] the drawee, if the holder is [illegible] to [illegible] payment. [illegible] the drawee [illegible] the drawer before presentment that he would not honour the bill, [illegible] excuse the want of notice of its being dishonoured. For he may have procured the means [illegible] [illegible] [illegible].

[illegible] that the drawer has no effects in the hands of the drawee that had afterwards a circumstance that he has sustained no injury by the want of notice. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

If the drawer or acceptor for value of the amount [illegible] the [illegible] bankers are bound [illegible] 5 Ch. 17.
extent of the [illegible], without notice [illegible]
for or to that [illegible] is [illegible]
- Which [illegible] is a [illegible] for [illegible] and no notice is given that the [illegible] are [illegible] — All on the balance of the account to pay the [illegible] the [illegible] are liable to [illegible]

Manner in which Notice is to be given.

The manner of giving notice of non-acceptance is different in the case of a foreign bill, from that of an Inland. In the latter case no particular form of notice is required. 14 & 15 Vic. 99. 16 & 17 Vic. 170. Chit. 90

In case of a foreign bill, a protest must be made and notice without a protest will not avail. This is a rule of the law merchant, and a public law of mercantile necessity. The rule is imperative and the protest is indispensable. 2 Kr. 95. 6 Mod. 8. Salk. 131. 2 Str. 73. 5 B & C. 559.

The form of protest is usually dictated by the usage of notaries for the purpose of serving an uniform rule.

The protest is generally made by a notary public, upon which notice is given to the drawer and other parties, a presentment must be made once again

[illegible] of Endorsement.

[illegible] the notary and of the drawer with reference

[illegible] the bill is to be noted for non-acceptance

and then a protest [illegible] should be

noted is to be drawn on the bill as at the

same may be in a copy.

[illegible] noted thus authentication

bill of exchange is given by all bills on Endorsement

for the notary public is one who acts not

under the business [illegible] law, or [illegible]

[illegible] but under the public law of Nations.

The mere noting of the bill for non-acceptance does not constitute the protest, but is

a mere memorandum from which the Notary is afterwards to draw up the [illegible] and officially

but this noting is regularly made by the Notary himself or by his substitute

or Clerk, for such subordinate officer is well

known to the public law.

If however the Notary public cannot be

found, the bill may be noted in the hand

of any credible person of the place where

it is dishonoured with the date and the reason

for its dishonour made between sunrise & sunset.

The protest bears the same date with the

noting or memorandum of non-acceptance

and this is done

[illegible] 2 Ld. Raym. 157
with the custom of the Forester where it is made.
[illegible] 61.
[illegible]
The proof is incumbent to the [illegible]
and the place where the bill is [illegible] 5 H. 7.
and if the bill is directed to one under a general
imployment and to a man [illegible] of
a place.
Bind a copy of the bill is always to be
prefixed to the notice, [illegible]
But a copy of the notice must record a copy
and the notice of more certainty than
[illegible] of the notice, must be service as well
as of the fact that the bill has been sent
[illegible]
It is not necessary to send the proofs
or bill itself [illegible]
[illegible]
With respect to Sutland [illegible] I have [illegible]
[illegible] 6 Mod. 80.
[illegible] 1 Salk. 81.
[illegible] 3 T. R. 69.
[illegible] 2 Esp. 902.
[illegible] 5 East. 84.
and [illegible] of the [illegible] refusal
and proved on facts are [illegible] proved
[illegible]
It is not [illegible] that the notice must
[illegible] the [illegible] which is not to be on
the [illegible] — and this seems not to be well [illegible]

58. Bills of Exchange

Chit. 19. In France, the bill, that notice is ever required for,
Chit. 93–8. is to give the prior parties an opportunity of
securing themselves, [illegible] notice [illegible]
[illegible]

Sk 98. Inld. bills in the Common law an Inland
bill was not required to be protested, under
Kyd. 150. the Inland Stat. 4 & 5 Anne, a protest is made
necessary in order to entitle the prior par-
ties to cost interest & damages. But the party
can recover the face of the bill, [illegible]
protest or without. [illegible]

Here a protest when there made is to be
made by the same officer, and in the
same manner in which it is to be made on
a foreign bill.

Kyd. 150. But though a protest is not necessary
in the case of an inland bill &c. For
the purpose above specified, yet notice of non
acceptance must [illegible] be given.

[illegible] In the case of [illegible]
[illegible] notice in the [illegible]
[illegible]

[illegible] the place [illegible]
[illegible]

[illegible] 59
[illegible] 2. B. & P.
is [illegible] even that [illegible] 2. B. & P.
[illegible]

A [illegible] in the time of [illegible] Bth. 144.
be [illegible] by [illegible] assessment or
[illegible] of [illegible] the life, and in [illegible]
[illegible]

Notice of non acceptance, or in case of foreign
bills of protest must be sent within a 2. H. Bl.
reasonable time — to all the parties to Bul. 271.
whom the holder means to look for pay- Ryd. 26
ment; otherwise, only those who receive
notice will be liable

What this reasonable time is, is a question
of law when the facts are ascertained. 1. B. & R. 74
Formerly much more time was allowed P. Ra. 43.
than at present. Then even two months 2. H. Bl. 299
were not judged unreasonable. 2. B. & P. 505.
5. R. 68.

And the rule now seems to be settled
that notice should be [illegible] as
soon as possible after the [illegible] of
the case.

[illegible] if the party to whom notice is to be
given, resides at a different place from the 1. B. & P. 189
holder, we assume the rule now is that notice must Rul. 26.
be sent by the next post, or [illegible] — [illegible]

It was once holden, that the notice required

Bills of Exchange &c

1 P.R. 167. Hud. 120. Ch. 98.

must come from the holder himself and Lord Kenyon in the case of Hawes v. Croft, after & after 98 said that it made no difference who apprised the drawer, so long as the object of notice was accomplished.

Hence it seems that notice by one party having been received of a claim on the bill will inure to the benefit of others, who have claims on it.

Ch. 98.

I suppose that the holder is an indorsee and receives notice to the drawer & indorser and then recovers of the indorser. The latter may avail himself of the notice given to the

5 Mass. 265. 1 Vent. 45. 1 B.R. 712.

drawer & recover the amount of him. Quere that notice should be given to all the intermediate parties to whom the holder intends in commencement to resort for payment. Those who receive no notice are discharged from liability.

I have already observed that when the drawee has no effects in the hands of the drawer, he is not personally liable to notice.

But the law does not dispense with the necessity of notice to an indorser, on whom the holder means to rely. He should give notice that he may secure himself by recovering of the consideration which it is presumed he has paid for it.

1 B.R. 712 Pat. R. 209.

On the other hand if notice is sent to the indorser, want of notice to the drawer will not prevent him. Formerly it was held that it sufficient for him that he has had proper notice. Indeed every indorser is to every subsequent holder in the nature of a new drawer.

Hence also we observe that the consequence of a neglect to give notice may be waived or excused by matter in pais or facts. This of ofte in bill has been disconvered by the counsel, a fresh promise, hence stand of the demand. This is a total waiver of the obligation arising from want of notice. The rule is the same if the promise to pay is.

Nor this is an express promise of his liability. It has moreover been holden however that if the promise is made without a knowledge of the fact of non acceptance he is not bound by it. That this has been overruled — and it has been decided that this promise either in an express or implied promise of such notice in the circumstances.

It has been determined that the promise that a promise to pay is without knowledge of the fact of non acceptance and of the legal consequence of such notice does not avoid him. In this case it is apparent that the assumption not excused

Bell 17. 2 K. 347

2 Mo. 660 Ep. K. 334

Ph. 256 2 E. K. 718. Bul. 276. Bul. K. 250. 1 Ba. K. 57.

Mose 5 Bos. 275. 5 E. K. 792

new Rule 18 Eng. K. Mo 2 E. 448 480. Ph. 231. 232. 1 Ba. K. 256.

62. Bills of Exchange &c

Chit. 102-3. 158. — Marsh. 2 East. 97. 1 B.&A. 526. 2 Bos. & P. 469. 1 Esp. R. 270. 2 M. 546. 703.

Legal consequences of a mere of notice.

Campbell C.J. made considerable doubt whether the doctrine was good in general. [illegible] the endorser of a bill [illegible] in a mere form. Everyman is presumed to be acquainted of the law and this rule is well supported by the accommodation of mercantile.

The Plaintiff had no case, although and that the Defendant having paid the bill [illegible] the money was paid under a mistake.

Marsh v. Maxwell & R. & supra.

In case of an acceptance on a mistaken ground of notice is waived in a [illegible] consideration, but something [illegible] bill becomes payable for the consideration becomes absolute.

2 T. 91. 80-81. 2 T. 212. Cowp. 571. 158. 160.

There is a great difference between an acceptance called an acceptance upon protest.

When a foreign bill is protested for non-acceptance it may be accepted after protest. [illegible] the drawee [illegible] (after the time required &c) for the honour of the drawer or indorser. When [illegible] bill is made the bill is [illegible] on the ground of [illegible] liability on [illegible], but merely for the honour of the [illegible] for [illegible] acceptance.

Bayley 97-8. Chit. 152-6. Chit. 97-103. 122-163. 181. 200.

[illegible] agreed to draw on the drawee [illegible]
[illegible] when the bill is drawn on a second or
a third person, and the drawee, though [illegible] Rus. 156.
willing to accept an this second, is [illegible] Bar. 250
willing to accept an a second of the drawer [illegible] Bar. 39
or indorser. If the bill is drawn on a second of the drawer & the drawee accepts the bill generally, he accepts on a second of the third person, and is bound thereby and against him.

It is a common case, if the drawee is unwilling to accept, that the drawee, a friend, engages to pay for the honour of an indorser, supposing [illegible] protest.

Good is notice, and he must give notice to the party for whose honour he accepts. Bar. 41 37 Pub. 61.

This made a acceptance by the drawee has this important consequence, that it renders the receiver, from whom it comes, liable from a general acceptance, though he has expressly [illegible] the drawer on his hands.

The effect that such an acceptance is to give the holder an [illegible] against the party for whose honour he accepts and against all the parties before him, as [illegible] the acceptance was made. Whereas a simple acceptance, [illegible] only against the drawer

[illegible] of [illegible] accepted [illegible]

and even then there is a presumption, that the acceptance was in writing & the drawer bound in consequence of the acceptance. By an acceptance for the honor of the drawer, the acceptor

Mar. 173. 153.
Bram. 500.
17 R. 269.

undertakes, in strong terms, to be bound, before them are two indorsers, and the drawer accepted for the honor of the second indorser. He seems compelled this second indorser unquestionable, & indemnified him — but if he has a remedy upon the second indorser, of course in his recursive remedy at all the prior parties in the same manner as a third indorser would have had.

[illegible] of the drawer [illegible], [illegible] accepted for the honor of the [illegible] indorser.

[illegible] 58
Bill of Exch. 14

Bill of Exch. 58

But an acceptance for the honor of the bill, is the same as an acceptance for the honor of the drawer.

Bram. 142.

Since a bill, free-hand, accepted sufficiently for the honor of one party in one person may afterwards be accepted by another person for the honor of another party.

Then then, in our opinion, said Lord Ellenborough, is bound to receive an acceptance supported when offered by a responsible person. But it seems, cases to be settled, that the holder must

A. [illegible] 1[illegible] 1[illegible] 1[

Bam. 1655
Pla. 45
Ca. 575
2 Ald. 413
Bam. R. 76
3 Barn. 1682.
1874.

It being upon a bill of exchange accepted the obligation of the acceptor, though it may vary his rights with regard to prior parties.

Sy. R. 113.
Bram. 457
Ind. 153.

If one accepts for the honour of the drawer he is liable to all the intermediate parties and to the drawer; for as to them he assumed the responsibility to which the protest on dishonour of the bill subjected the drawer.

If one accepts for the honour of a particular indorser he is liable to all the subsequent parties and not to that indorser or to the drawer, nor to any prior indorser; for the extent of his liability can be no greater than that of the party for whose honour he accepted.

Bram. 457
Ind. 153.
Ibid. 155.

If then one accepts for the honour of a second indorser he is liable to a third indorser and to none of the prior parties: and of course he is entitled to the same rights, with regard to the other parties as such 3d indorser would have been.

Bram. 454
1 P.R. 201
Bro. 3. 173
1 B.R. 113
Ind. 155.

But the other hand as to those parties to whom the acceptor supra protest does not become liable he has a right of indemnity against them. If he sustains any damage, as if he is compelled to pay the bill he may recover the amount from the party for whose honour he accepted or any prior party.

and how a bill will make an other creation which will perhaps more effectually exhibit the object of acceptance, than the rules we have been given.

An acceptor supra protest is as to the party for whose honor he accepts and as to all the prior parties in the character of an indorsee. He ultimately becomes the holder of the bill, that is, if he is compellable to pay it. This will be illustrated by considering the nature of the transaction and it will be perceived that an acceptor becomes virtually a purchaser of the bill.

Eq. R. 113.

Transfer or Negotiation of Bills.

Bills which are negotiable and all, are in their nature negotiable in a peculiar manner. This is true of bills of exchange, promissory notes called and of Bank Notes.

3. Wils. 211
2. B. & P. 79.
3. Burr. 1517
1527
3 Lev. 299.
Salk. 125
1 Ka. 180

It was formerly doubted whether bills made payable to bearer were not strictly negotiable, but the rule has long been settled otherwise.

Salk. 125
131. 127
3 Wils. 117
Ra. 226.
2 M. & S. 442.

When a bill is not negotiable in manner will operate as against the rules mentioned, or if it were so, that is, should subject him to pay the amount if the person in whose favor it was drawn fail to pay it.

The Papers in a action though not negotiable and common law so as to enable the assignee

Title of Defendants

To a mistake in his name. name

supra are yet so far from favorable as to raise an implied covenant on the part of the assignee that his name may be used and the amount collected.

Nor whether a bill is improbable or not is a question of law, to be determined by the Court.

It is said in case that that is new question

2 Bur. 216 — the custom of merchants may be enquired into. It really appears to me that this subject 7 Cr. 29 — 2 Pick 513 — has been treated improperly. I think that merchants are constituted, inclusive in the same manner, as a custom may be consulted to explain a term, or a foreign authority, to ascertain the law, and not to instruct the jury in fact.

Watson 2 R 251-2

4 Cr. 28. — It is a general rule that a claim from the 1 Th. Mag. 90 — must be made under the name or the person having the legal interest in the bill. Hence an indorsement by one who has not the legal interest will not transfer the right in the bill.

Chit 121-2 — But if a stranger will value his indorsement of a bill he himself will be liable on his indorsement though he gives no remedy against the prior parties.

and bill made honorable to receive may be transferred in same manner as where without an incorporated.

And in this case, if it is transferred by a house who has not the power in treaty the house cannot receive or amend the money bill, provided he knows, that the person from whom it received it had no right to the bill, but if he did not know this at the time, he may receive on the bill.

Resume rule before proceeding with regard to a bill made honorable to receive & incorporated in branch — for then it becomes certainly a bill proper to receive; which cannot be prepared before one pass up the incorporated with his own name, and if he does not choose to do this he may return it back to any third person with the reason annexed. Or the person who incorporates a bill in branch before hand by both it to be understood to be a bill not proper for his consent of the B.H.

If so form with their power or forbear, or reject the right of transfer is in Lex Parliamentaria.

If the house or to the receiver back, it the right of transfer with power with from the time of the bankrupt committed, in the commission

3 Bur. 1510
1 Ev. 450.
1 Bl. R. 485
Doug. 611.
n. 633.
2 Ra 738
Bric. 251.
103. 121-2
-91. 209.
Ind. 102.

Stra. 515.
J. Prec. 43.
Ld. Hol 246.

Burr. 459
n. 871.
775
Ind. 197.

If however, the bankrupt has transferred the debt before the act of Bankruptcy, and omitted to inform it he even indorsed it afterwards for this is only the completion of an inchoate act which should before have been performed.

Bak. 111-112.
3. Mal. 1.
2. Ak. 1260
2. Ves. 1225.
15 R. 487.
1 Bos. & P. 622.

In the assignee of the bankrupt the right of transfer as well as personal representative or his & ec^r or administrator.

If a bill is made or transferred to two or more the interest and right of transfer is in both

Hyd. 186 or all collectively and not in one alone. But

Wood. 153 this interest or right if the persons are partners may be transferred, by the act of one; because one of two partners has a right to act for the concern. This is not equal to the case, where two persons join in indorsing a bill; for by that act they in effect make themselves partners pro hac.

Cowp. 5.
2. Ves. 197-2
2. Show. 519

If a bill is payable to A for the use of B, the is said of transfer for it is B; for he has the entire legal title, & B, only the equitable interest.

When a bill is indorsed to an infant and he him indorses over to another, it seems on judicial authority, that this third person can recover against the first parties though in the Elementary writers it is said that he may.

Bills are usually transferred after acceptance and before they become due; but they may be transferred before acceptance.

A transfer of an intended bill may be made before the bill itself is made. Thus if A increases his name on a piece of paper, and delivers it to B, the latter may procure a bill of exchange to be drawn on it to any amount B is authorized to make.

Dunn 1 Ba. 446 Ex. 514. 1 Ba. 313. 314-5. 3 Esp. 112-3. 2 Ryd. 89

A valid transfer may be made after the time appointed for payment, and on such transfer for value received, notwithstanding the holder takes the bill subject to all the equities between the prior parties, provided he knew that such equity existed, it according to some opinions, whether he had knowledge of it or not.

3 Ba. 1. 83. 7 Ba. 428. 1 Bla. 273. 3 Bur. 1516. 2 Bla. 505.

Still however the party who transfers a bill after it has become payable, cannot avail himself of such transfer as against a bona fide holder, if it be a valuable one. Dorstatter, though the prior parties were — And I should suppose that it would not be a sufficient defence against an innocent transferee, if no delivery there is no other equitable ground of set off.

1 K. 98. 99.

But even in course and after payment bonds no other of the parties than the person making it. The rule however of the Court is, in consideration the days of grace need not be stated — for otherwise there was no occasion for any person to sue should hope pay the holder on his award.

1 Mod. 235 4 Ill. 470 17 Ill. 29 But where after payment by the drawer of the bill it was holden that the holder whose could the bill from the payee could maintain against the acceptor and not against the drawer.

L. Ra. 360. Carth. 466. 12 Mod. 213. 1 Salk. 65. 2 Mod. 262. But a bill paid in part may well lie in court for the residue.

Mode of Transfer.

The mode of assigning the transfer is governed by the intention of the parties, or the usage of trade.

9 Ill. 500. It, of course, by the terms of it.

If the terms, and the intention, are not in the same, will be inferred from the example before given of a bill made payable to a fictitious person &c. &c.

A bill made payable to A or bearer or to bearer generally, is transferable by mere delivery, without indorsement.

1 Bl. 505. 1 Br. 180. 2 Ca. 75. Salkeld 126. 8 Ill. 91. 2 Ill. 485. 2 Salk. 125. 3 Ga. 515. 1 Ga. 382. 6 Mass. 422.

The rule is the same as to a bill made payable to A or order, after A has indorsed it in blank. [illegible] is not originally [illegible]

able without indorsement. Read by the vendor any house feed holder may fill up the blank with his own name.

Plowd. 115
Str. 557.

The mercantile contracts are all liberally expounded, and as no formal words are necessary to constitute a bill of exchange, so no formal words are necessary to constitute an indorsement. It is sufficient if the indorser name be written on the back or other part of the instrument. Indeed it was formerly contended that a mere writing on the bill, a bare signature, was not sufficient to constitute an indorsement, but it is now settled that it is sufficient if it be made with intent to indorse, that is, if it be made with intent to transfer.

2 Ld. Raym. 1548
2 Str. 1085
1 Salk. 126. 130. 128.
2 Ld. Raym. 743.
Com. R. 31.

3 East. 157.

The indorsement may be in either of three forms, in blank, in full, and restrictive. In blank, there are but two forms, indorsement in blank and indorsement in full, under which restrictive indorsement in full are comprehended.

I. A blank indorsement is nothing more than merely writing the name of the payee, without any thing else on the back of the instrument. This is by far the most usual mode of transfer.

2 Salk. 89
Bull. 271.

It is to be observed however that an indorsement in blank does not pass, though the instrument is the bill and merely gives the holder the power of constituting himself the

Bills of Exchange &c

1 Salk 125
1 Str. 130.
2 Mod. 152.
244
2 Ld Ra. 443
Str. 1133.
Com. R. 211
Bul. N. P. 271.

indorsee or assignee has letters filled up with his own name. "Pay the contents to &c." And this must be done before the instrument is conveyed to the jury.

An action may be commenced by the indorsee, before he fills up the indorsement. It is only required to be done before it is invested as evidence of the holder's right to the jury. Hence it may be done on trial.

Tyd. 956.
1 Sw. 163.
5 Rep. 87.
Salk. 125
1 Mod. 297

A blank indorsement which is remain so is ambiguous; it has no contents of lead. The holder may fill it up with a mere power of attorney or receipt, or any thing which comes within the meaning of the instrument. If the holder fills the blank with a power of attorney, he should bring an action for the indorsee.

It follows from the last rule, that while the indorsement remains in blank, an action may be brought in the name of the indorser, and if necessary, the holder may

Lha 80
2 Mod. 129.
244
2 Str. 1133.
Salk. 125
1 Str. 128.

sue in the name of the indorsee, or of attorney to bring the action.

Should after the indorsement is filled up with an order to pay the contents to another, no action can be maintained in the name of the indorser. The most indorsement now

[illegible] to another, the indorsee [illegible] the bill [illegible] [illegible] of negotiable instruments [illegible] change.

Since in pursuance of this rule it has been determined that when the drawer and the drawee sign the bill indorsed in blank, and an action was brought in the name of the indorsee to recover the bill against indorser, it could be maintained in his name.

Rapp. 96. 2 Ld. Raym. 871. Salk. 130.

We do not however discover on what principle this could be done. It is conceived to be proved that the holder had readily purchased the bill.

Mansfield observed that an indorsement in blank by the drawee makes the bill transferable by delivery. Mansfield further to observe that the negotiability of a bill indorsed and remaining in blank cannot be restricted in any subsequent indorsement in full. It seems the holder may strike out the intermediate indorsement in full, and fill up the blank indorsement to himself.

Bayley 240. Bayley 180-2. Bayley 210. Smith 118. Bos. 20. Selwyn 225

And on the other hand if the maker makes an indorsement in full, with a blank indorsement by the indorsee, will enable it negotiable from him by mere delivery; but without any subsequent indorsement the bill cannot be further negotiated.

Bayley 182

7 Wm. 3. Ch. 18. Comyns 320. 3 Term 170. 1 Bos. & Pul. 565.

Yet a bill payable to order is not negotiable by mere delivery unless it is indorsed in blank by the payee or an indorsee. And the bill becomes the property, and will, without an indorsement of some kind from the payee, or otherwise, is payable only to him.

Cro. Eliz. 2 Lev. 85. 2 Str. 1122.

The indorsement in full, and the name endorsed by placing it over which accompanies the indorsement, to a person, the interest in transferred.

Such an indorsement constitutes, in effect, a transfer of the interest to the person who is named in it.

1 Ed. 6. C. 22. a. 2

The indorsement in full makes the debt transferable, in the hands of a stranger, such as the indorsee of the indorsee. But of the matter a blank indorsement and the instrument then becomes transferable by delivery in the same manner as if the indorsement to the original payee had been in blank.

Com. R. 71. 1 T. R. 281. 2 Bos. 1216. Ch. 557. Doug. 237.

The negotiability of a bill originally negotiable, cannot be restrained, even by the payee, by express words of restriction. The mere omission of the operative words of transfer will not prevent its negotiability.

Restrictive words are contained in express words restricting the negotiability of the bill. If there the power is taken away. Thus: May the bill to B not be given the bill can not be further negotiated. — So if the drawer indorses from the bill to B for my use, the negotiability is restrained.

Cowper 657. Pillet 105. Blatch 19.

The drawer or indorser having the absolute property may limit the payment of the bill to whom he pleases. The bill was formerly thought to be assignable, but it is now settled as a law, given it.

Contra vide Swift 305. 1 B.L.R. 265 by Stevens. 3 M.R.R. 225. 2 Burr 1232.

And in this case suppose the drawer had made a branch indorsement, his indorsee indorses over. Then the bill to C is payable, this restrains the negotiability notwithstanding the original bill is indorsed. For the restrictive indorsement by the indorsee, shows that the second indorser has not an absolute property in the bill, but is a mere agent.

1 B.L.R. 299. Ibid. 249. Burr 1032.

But, secondly, upon principle, bill if the indorsement be the first indorsee, restrictive, then after the indorsee the bill runs with not here. Thus if first no an [illegible] to this point. Then if the first indo

* Appears in 3 M.R.R. 225. 1 B.L.R. 265.

[illegible] to the endorsement — "Pay the contents to B, rule" — and B indorses the bill to D — this indorsement (apprehended valid) is good — for the interest being transferred the reason of the last rule cannot apply.

A transfer, it seems, cannot be made after acceptance, for [illegible] the amount [illegible] on the bill, of a transfer could be made of some money to B, and another to B it would subject the acceptor to a multiplicity of actions, contrary to the intention of the acceptor, when he agreed to satisfy the bill.

I conclude however that an indorsement for part only, even after acceptance, would not be invalid, for the former rule is intended for the protection of the acceptor, and commonly serves to prevent the liability of the indorser.

If the bill is indorsed to two in separate parts, before acceptance he is liable, because by his acceptance, he agrees to the simple indorsement. The reason of this rule justifies the bar.

It seems, then, from these two last rules, that the drawee can never be charged in such a divided indorsement, but he of indorser

Pa. 300.
Carth. 466.
Salk. 65.
12 Mod. 214

Beawes 266

12 Ra. 360
Ld. Raym. 55.
Ld. R. 360

possible case of a bill indorsed before it is drawn. For then his appearance is in blank.

Indeed the [illegible], who accepts the same in consideration is not bound by an indorsement of Land to A, or Land to B. Or, neither is he bound by an indorsement of Land to A though the other Land is not indorsed at all. For he would make this bank to [illegible].

But after a Land of a bill has been paid the residue may well be indorsed. No possible inconvenience can result to the acceptor from such an indorsement.

2 Wils. 202.
Doe v. Ha. 361.
Salk. 65

To convert the transfer, the bill will be allowed, to the assignee. Privity is applicable to allowable contracts.

Ibid. 81
115-121.

Operation of a Transfer.

The transfer of a bill by indorsement is similar in legal effect, to the making of a new bill. Thus the indorser is liable and even responsible as a new drawer upon the original drawee. This will be understood by considering the nature of the transaction.

Str. 38
1 Bur. 674.
2 Salk. 68
2 Show. 46
501. 495

Land a promissory note, when indorsed under an attest [illegible] is a "Bill of Exchange" [illegible] and it bears no recommendation and all to a bill. When the note is indorsed

Vin. Ab. Bill
248.

indorser is in the nature of a drawer and the indorsee is merely an order to the promisor to pay the contents to the indorsee, who is in the place of the payee of a bill.

And upon this principle of analogy, it is

4 P.R. 149
6 Mod. 29-31
1 Mur. 576.
2 Pha. 743.
1 Salk. 132-3

said, that a promissory note, when indorsed, may be declared on, as a bill of exchange, and it has been so determined.

Hence also, the obligation to which the indorsement of a note subjects the indorser in favor of the indorsee is the same as that to which the drawing of a bill subjects the drawer in favor of the payee.

A transfer by bare delivery, is made for an antecedent debt, or for a valuable consideration, passing at the time, and vests the party receiving it to his immediate profit to an obligation similar to that, created

7 P.R. 64
6 P.R. 52
2 Pha. 978

by indorsement.

If, then, a bill is transferable by delivery, it is thus transferred, on consideration, and before the party transferring it is under the same obligations to him as if the transfer had been made by indorsement.

12 Mod. 246
521. 498

+ not law
Holt 298
Salk. 124.
3 Salk. 68

The rule is of the same in the mercantile and common law.

This rule however does not obtain if it is expressly agreed, between the parties, that the assignee shall take the bill on payment and himself assume the risk.

7 T.R. 656
Hall. 12.
Doblit. 124.

If then a bill is transferred by bare delivery, and the drawee fails to pay it, the assignee, may regularly recover of the assignor, on the consideration of the transfer. He may maintain an action for the antecedent debt, as for the goods, though he cannot recover on the bill, since the assignor's name does not appear on it.

7 T.R. 656.
7 Bl. 177
Lthg. 908
Hyd. 904.

not assignable
Pad. 1 vol
Str. 304-10
Bar. 452.
Doug. p. 611)

And for the last reason he cannot be indicted in form of a counterfeit assignee for his unauthorised transfer, the party having ceased to be a party to the Bill.

Bulle. 123
Lthg. 928.
Cath. 241.
3 Burr. 1525
Stran. 130.
Bl. Sp. 841

There is still another exception to the general rule. The assignor is not liable to the assignee in this case, if the transfer was made by way of sale, as is found or discovered. For here is no implied ground of action in the case. There was no fraud at all, nor was any consideration at the time.

3 T.R. 757.
1 Bl. R. 445
Hyd. 92.

Where several parties are liable, an action against one is no bar to the other, &c. &c.

[illegible] recovered [illegible]

them separately. But he cannot join them in one action.

And if the holder receives one of them even to execution, as if one is satisfied by one and satisfaction, or if one is voluntarily cancelled, by the act of the party, the other is discharged.

2. Bl. 235.
4 T.R. 184.
825.
2 Ma. 091.
Salk. 572.

If the holder of a bill, transferable by delivery, loses it, and it comes into the hands of one who was ignorant of that fact, and who has given bona fide consideration for it before it is due, he should be allowed to recover on it. So also if the bill was stolen the rule is the same.

Bull. 452.
3 Ch. 1516.
Lord R. 778.
Salk. 26.
7 T.R. 207
3 Salk. 71.

But if the holder in the case supposed, recovers the bill after it was due, he is bound to the transaction (and that transaction will be supported by the strictest scrutiny) that he knew the bill was unfairly transferred; or, according to some opinions, he is at least bound to all the equities which could have attached the possession of the bill.

And if in either of these cases (the holder not having given bona fide consideration for the bill) the drawee knows no matter

1 T.R. 567

of the loss, pays the holder. He is protected & 4 Pk. 28
cannot be compelled to pay to the loser.

But if a lost bill is paid to the holder, by 18 Johns. 370.
the drawee, and of the maximum course Bull. 125.
of business, as if it is paid before the 130.
time of payment the drawee, it seems
never be compelled to pay it over again
to the loser.

~~The same rule~~ If a bill transferable
by indorsement only, is transferred by
a forged indorsement, the holder, even
though he came by it bona fide, cannot
recover on it. The receiver of a bill always
must assume this one risk, of the bill on
the indorsement being genuine.

If then, one assuming under a forged 5 R. 604
indorsement should receive the money, 4 Pk. 28.
of the drawee, to tell the true owner, Daugh. 517 to
upon recover the amount over again. 624

It is a rule of public mercantile law that
if the drawee of a foreign bill, does it whether
he has accepted it or not, he must pay
to the party to whom the bill belongs. Bow. 184.
Promissory note of the same amount & Bul. 27.
payable at the same time.

If he refuses, a protest must be made and
after the day of payment he liable to an action

Chit. 27-8 There is however no such rule, as sending Inland Bills.

If the drawee absconds, I suppose after acceptance the holder may forward the bill, for better security, and then he must give notice to the drawer, parties of the drawee's having absconded. This rule, I conclude, cannot operate, after acceptance for it seems adopted to bill of better security, when the drawee has been name.

Ba. 743 Scand. 422 Ca. 29.

Bom. Dig. Merch. B. 8 Chit. 129

This better security, is to be given, when given and all, by a third person, who engages under the penalty of, to be bound as principal for himself.

I have thus far traced a Bill from the act of drawing to the acceptance, from fer, &c and am now to consider the

Presentment for payment.

The general rule is that the holder must present the bill to the drawee for payment at the time when it is payable if such time is appointed in the bill, and if not within a reasonable time.

2. Bin. 69 7. P.R. 58 Myd. 20-5 Salk. 127 Str. 18 2 Ma. 470

Presentment for payment must be made, though the drawee has refused to accept.

If the holder does not present for payment on the day required, he loses all remedy against the drawer, and indorsers. Pam Show 155. Bull. 182.

If the acceptor is a minor, and the time when the bill becomes payable, fixed, he is liable to his executor or administrator, if any are appointed, if not, and the time, when the minority had ended. Pitt. 146. Pitt. 132-6.

Bad or improper to present for payment may be excused, for the same reason which will excuse a refusal to present for acceptance.

The acceptor himself, can never plead upon the ground of delay in presenting for payment, though the prior parties may. Dougl. 235 n. 247. 1 Esp. R. 46.

Nor can the acceptor even plead, on the ground of any indulgence given to the other parties, for the acceptor is the first person liable.

It has been said, that an action will lie by the holder against the acceptor, in any presentment for payment, for that he being the first person liable, is bound to pay the bill, and need not be sued. This rule, though in general true, is not to be in any questionable case, for, the bill 1 Salund 35. 10 Mod 70 Bayl. 76. 100. 1 Will 31

Bills of Exchange & Notes

being negotiable the acceptor cannot be

Doug. 222 supposed to know to have forged indorsement.
Pott. 140 Saund. 68. who is actually the holder. Court take this to be the better opinion.

In the case of foreign bills, of the common indorsement altho between the time of drawing and the time of payment, the acceptor is to pay and the rate of it, at the time of payment.

Nott. 174. Bull. 133.

However the question which I before considered doubtful, must be determined — and

2 Raym. 275 Bull. 134. where the indorsement of the acceptor is to pay an amount, he must clearly insist on an amount, before requires a liability.

If the acceptor appoints payment to be made at a particular place, as at his bankers.

2 Str. 1199 2 H. Bl. 99. the acceptor as well as all the other parties, prima facie entitled to insist on the notice to insert and that place as a defence.

Still however, if it is proved that the Bank to had no effects of the acceptor in his hands

1 Esp. R. 15 the rule does not operate.

1 B. R. 157 2 Mod. 295 Bull. 134. This presentment for payment is to be made by the holder or his agent. Mr Justice Abbot said this agent must be employed to receive a good acquittance. Mere

Fortheremid this is not required. For to enable the exchequer to call an accounting, he must have a paper by record in the exchequer, or other transactions of this nature is not required. A tender of the bill, alone, is sufficient on his part — and if the other wishes for evidence of the payment he can easily procure it.

Cruta Ecc. 154
Pyk R. 1.42
2 Ray. 72.

Presentment is, generally, to be made to the chancellor in person. But this is not universally true. For if the chancellor is not at home it is, in general, sufficient to present it at his house or place of business. Even at a place appointed for presentment is a sufficient presentment at that place is sufficient.

Bro. Ab. Chancery 7.
2 Ch. 500.
2 Mod. 24.
Cy. R. 4.
Cy. 512.

It is said that if the place appointed for presentment is the Lord's house, incorporation of his hearts by minority is sufficient presumption however, that no act on his part and in case forg.

2 Ch. 155.

If the receipt be mentioned, the lord may inquire for the place and present it there (if no particular place is specified)

Fitz. 128
Ch. 74
12 Ric. 11
Ind. 125.

But this seems required to be, if the accepter has absented or left the kingdom.

Presentment at his usual place of abode is sufficient.

the time of presentment for payment, where the bill is payable at a certain time after sight or at a usance, all persons on the approvement, assent in the indorsement.

Where the time is not appointed, the bill must be presented for payment in a reasonable time; and see Ca. Ed. Bas. 1 Rep. 86.

When a time of payment is expressed, the time of payment or presentment is not the time mentioned, but according to the custom of place, three days of grace are allowed.

Where the bill is payable, and no day is expressed, it has been doubted, whether days of grace are allowed or not — but it is the settled opinion that it is, because, that is the rule of exchange. The American authorities in this way.

If a bill is drawn payable on a day certain, at a place, using a different chronology and style, from that of the place where it is drawn, the time of payment is ascertained, according to the stile of the former (ie where payable)

If a bill is drawn payable, after date, or after sight, or at a usance, the days of date in the usual mode of the first and the other is excluded in the computation. The general rule of the E. L. is different.

Beaw. 251. Bayl. 68. Chit. 59. 60. 64. 83. Story Hyd. 8.

Beaw. 252. Chit. 280. Bayl. 68. 5 B & A. 212. Story Pr. 576.

In the law merchant, it matters no difference whether the bill is payable a certain time after date, or after days of the date, because it comes due on the last day of the days.

2 Mod. 308
2 Mod. 310
Comp. 714
3 T.R. 623.
Pow. Rev. 448.

If a bill, payable at a fixed time after date, has no date, the time is computed from the day on which it issued — but exclusive of the day of the date.

2 Day 1870
4 T.R. 337
Pow. Rev. 21.
Gow. Bill Bill
Bail. 15. 3.

Days of grace are so called because the indulgence was originally a matter of favor, but it is now established as a matter of right.

4 T.R. 151-2.
Hyd. 9. 12. 21.
Gow. 59
Bail. 261.

The number of these days of grace, is different in different places, and the law merchant allows.

Bail. 150.
Pow. Rev. 448.
Hyd. 9-10.

In one the day of grace allowed, it is the country are those.

The bill is to be presented, on the last day of grace. To present on the day month, would be nugatory, for the drawee is then under no obligation to pay.

Bail. 140.
143.
Pow. Rev. 134.

In England the Anniversary, Sunday, and holidays are excluded.

If the last day of grace happens to be a Sunday, demands should be made on the preceding day; and if payment is then refused, the bill is dishonored.

2 Str. 783.
Str. 829.
Hyd. 140.

And when the days of grace are all over, no demand can be made, protest and notice must be given before the end of

Bail. 261.

Bills, &c. — Days &c.

In the commencement the words usance in parts the usual or customary time appointed by usage, ~~appointed~~ for payment of bills drawn by the citizens of one, two, or more countries, or place of another. And the custom of the place where the bill is payable is to be resorted to to ascertain the time. The length of this period is different in different countries.

Bro. Ab. 258. Ryd. 6 Salk. 145. 6 Mod. 2. Bl. 141. 6 T.R. 224 2 East. 333.

If a bill is payable a day, a month, or a month after sight, or sight, the computation is by calendar and not lunar months. This is different from the analogous rule of the Common law.

Bac. Abr. 6 Ro. 7. 6 T.R. 212.

If a bill is payable at a fixed period after sight, the time is computed from the day of acceptance or protest. For acceptance

When no certain time of payment is fixed

Cro. 4. 5 Str. 1175 1246. 9 Ma. 928 1 B.R. 165. 2 Bl. 565.

and the presentment must be in a reasonable time: — (as if the bill is made payable on demand or at sight)

The day of presentment being appointed or

Ryd. 125 Ch. 69 – 148 Ryd. 5 Ch.

ascertained, presentment must be made within a reasonable time by the expiration of the day and within the usual hours of business.

In presenting for payment the bill should not

he sets forth the demand, and if it is found to be 416,000 and if it is insertion is made an order issued as made by the money is called for.

Amendment should be made only by the owner of the bill or his agent. Pl. 104 Bl. 46.

And on the other hand, garnishment should in general be made only by the owner or his agent. If the garnishment is made to the original payee, after he has assigned the bill, this will not avail the assignee in a suit against a demand by the holder.

If a bill is payable to A or order, for the use of B, garnishment should be made to A or order, and not to B, who has no legal hold on the obligation. 2 Chitty. 910. Cowp. 5. Ind. 107.

But fourth garnishment for garnishment is to be made within the usual hours of business, when money is payable on a certain day. The fourth day is allowed, all the intervening of holidays. This rule does not apply to foreign bills. 1 Ala. 189. 1 Shand. 287. 4 J.R. 173.

There are and Prac. Ben. Commissioners in which are considered under "Holder" 1 Ala.

The reasons for this rule above mentioned to foreign bills, is found in protested bills required to be made on the day when garnishment ought to have been made. Ind. 191. 4 J.R. 174.

Bills of Exchange &c.

It seems to be settled, that in the case of foreign bills, protest must be made according to the usual course of business, for reasons supra.

4 T.R. 170
Park. 67
Bott. 40

But in the case of inland bills, the acceptor is allowed the whole usance, since it is an usage long of quiet time for making a protest — (Qu. but seems to be settled.)

Qu.
Hod. 191.
4 T.R. 174.

If a bill drawn here, is payable in a foreign country, and in a foreign coin the value of which is afterwards raised, it is to be paid according to the value of the time of drawing the bill. This rule cannot be affected by the act yesterday said to have received an alteration in the course of Exchange.

Hin. 272.
Chit. 154.

If the holder compounds with the acceptor without the consent of the other parties, they are discharged, for the liability of the acceptor to them, is enlarged by the act of the holder.

Chit. 155.
188.
Park. B.R. 160.

But the rule is otherwise, if the acceptor is a bankrupt, and the holder never has recovered his dividend. For the law has confined him to all recovery as to the real payment the bankrupt, but did not recover it for the advantage of the other parties.

Chit. 155

It has been said that if the holder recovers of the acceptor a less sum than is due thereon it

he receives it only in lieu of no other security and the consent of the other, which, as it becomes, it is said, lends drawn into obligation to receive payment of the acceptor. This cannot of course, be done, if he receives it to the other, this cannot have in certainty for the advantage of the foreign parties.

It is said the liability to be accepted when a party named comes in and offers a receipt for the money, and a conditional payment. It seems to be clearly conceived, in case — certainly not in those transactions which are not mercantile. He can protect himself with caution, in the same manner as the men in ordinary transactions.

A demand received is closed on the back of the bill, and receiving the part payment, is prima facie evidence that the payment was made by the acceptor.

If the payment warranted the drawer in doubt or obscure case should be taken to insure the name on the bill, by a receipt may avoid.

If payment is refused, the holder should notify the bill, protest, and in the foreign or inland bill notice to all the parties to whom he looks to rely on the bill.

Bul. 270 275 opin. 6 Bin. 50. 160

Pick. Bin. 167

Pick. 176 19 20

2 Bin. 91 1 Bin. 102. Starkie 145

Pick. 25 Bin. 152 Dig.

Mass. 2 Dec. 1 Mass. 22 cases.

Bull. N.P. 272.
2 Ch. 158.
2 Ch. 202.

or abandon them. The rules which regulate the notice in case of non-payment of bills in general, the same as those for giving notice of non-acceptance.

Form of a notice (see Bulls) of a bill to be given.

If a part of a bill is only paid, notice is protested for the residue, is to be given in the same manner as if the whole was unpaid.

3 Ed. IV. 2. Pl. Hay. 910.
2 Ch. 209.

In certain cases, under 3 Ed. IV. c. 4, inland bills may be protested, not for the purpose of enabling the holder to recover the amount, but only to allow him a commercial remedy, for interest and damages.

Protest for the non-payment of a foreign bill must be made on the day of its date.

2 Ch. 565.
4 Pa. 176.
1 Mag. 743.
Pa. 229.

And then, notice must be given in the first ordinary conveyance.

In the case of inland bills, however, it seems that notice need not be given, till the day following that of the authority, for the acceptor is entitled to the whole of the business day for the purpose of making payment.

1 Ch. 129
4 Ch. 170

Notice, Lawson, in this case, should be given

96
Dana 515
2 Pa. 515

on the same following, if possible, or the prior parties will be released.

When a bill, payable on demand, is dishonored,

Bay.

Bills of Exchange &c

Payment upon his best, may be made for the honor of the drawer or indorser. Bayley 50 Chit. 107-115

But if the drawee has an acceptance, according to the terms he cannot pay any protest for the honor of an indorser. For as to him the acceptor is bound by his promise acceptance. Chit. 83

But if the acceptor has no effects of the drawer in his hands, he may still pay any protest for the honor of the drawer, after a simple acceptance. For as between him and the drawer the want of effects will essentially vary their rights.

Chitty says, the effect of such payment is to give the acceptor a remedy against the drawer. Chit. 164. Hyde 1525 Stow. 6.139. 17 R. 269.

But he wants some remedy against the drawer, whether the payment was made or not. Brown 548. 18 J. R. 113.

The rule as given in the books, is that the acceptor may thus pay for the honor of the drawer when he has no effects. Thus it that he may see it even if he had effects, though it might not be very honorable.

Generally payment should not be made for the honor of a party till after protest, for non-payment, but without a protest the party pay-

[illegible] to be [illegible] to recover on the bill,

96
Ch. 153.
Phil. 183.
203. 191.
205.

against the person parties. Though unassumed
& by, he may recover, as for moneys paid and
and expended, though he assumed recover on
a party to the bill. (this refers to the drawer.)
And I think that a stranger, who has before
accepted supra protest, may recover, as for
moneys paid and expended, though he made
the payment without a protest.

Ch. 184

Yes, a stranger may accept supra protest
for the honor of the drawer, or an indorser, —
so he may pay supra protest, and will
then have his remedy on the bill.

Remedies on it

Promissory Notes.

A promissory negotiable note is defined an unconditional engagement in writing, to pay a sum of money to a person named in it or to his order or to bearer, or in other words, it is a direct engagement to pay a sum of money to a third person, containing the other words of Bampfer.

2 Str. 167
Ibid. 95
18 Eliz. 105

A promissory note is commonly called, in the nature of a bill of exchange, drawn on the maker himself.

Ld Raymond 18.
Salk. 129.

A promissory note is not to be negotiable, and to be so, it must be, therefore, expressly conformable to the words of Bampfer.

Ld Raym. 757.
759.

Indeed at first, tho' it is not an instrument, on which an action can be founded, it is more evidence of a promise, in point.

3 Burr. 1528.
4 Bur. 1787.

But notes, made negotiable to order, or bearer, were held upon the same footing as inland bills of exchange in the 4th & 5th of Anne, made negotiable by 3rd & 4th of Anne.

Ld Raym. 19
Bull. 67-69

Other notes, by these statutes, were made assignable, not negotiable.

In America, as to notes above 35 D, we have a similar statute.

Dall. 2 Ch.

Now as promissory notes are in the nature of inland bills of exchange, the same rules which govern the same footing with inland bills of exchange, the same rules which

Promissory Notes &c

liable to the latter, merchants mercantile are liable of the former.

It is now settled though it was formerly doubted whether these had assigns of trade are to be allowed, have as valuable transferable notes, as upon bills of Exchange.

4 T.R. 152 a
Bul. 274.
Dougl. 612.
4 T.R. 167
Ibid. 169.

A promissory note when indorsed, bears a strict analogy to a bill of Exchange. (ut supra)

1 Mer. 076.

Bankers Cash notes are merely a species of promissory notes given by Bankers.

Str. 415.
55.
Bull. 194
Salk. 288
3 Lev. 299.
2 Str. 58
6 Mod. 29-30.

These were not determined to be negotiable before the statute of Anne.

L. Ray. 744
Doug. 535
1 T.R. 423.
1 Mer. 517-9.

Bankers Cash notes being payable on demand, are considered and treated as Cash. They constitute a circulating medium.

Ld. Ray. 741
Salk. 123
4 T.R. 149.

These Bankers notes, tho' they are regularly made transferable by indorsing, yet indorsed may be obtained on an action of Exchange.

Bank-notes, are nothing more nor less than promissory negotiable notes issued by a banking Corporation. And, though, in form promissory notes, they are treated, by the consent of the mercantile world, as money, and will pass in a will, as money (as money)

They are usually made payable as are Bankers notes, on demand, and are not considered as evidences of debt, but as money.

1 Burr. 457
3 T.R. 554
6 T.R. 185.

But though bank notes are commonly considered as money, and are a debt for money lent and received, yet not the opinion of the finder of them, unless he has actually received money for them.

Bank notes are not a lawful tender, because the creditor objects to them and the law, because they are bank notes & not money. But if he does not object to them on that account, it is a lawful tender.

No technical form of words is necessary to create a promissory note. Any writing containing a promise to pay money to pay with words of course, is a promissory negotiable Note. Hence a writing "I owe for value received to account with J. for a certain sum," has been adjudged to be a good promissory note.

But the mere acknowledgment of a debt, with words amounting to a promise, will not so operate. Thus, the memorandum consisting of the letters L. O. U. made with a view of evading the usury laws, is not considered as a promissory note, though it is evidence of indebtedness.

A promissory note must have the same requisites as a bill of exchange.

2 Pick. 280
Dougl. 107
1 Pick. 239
5 Mass. 254
3 Burrow 1669

3 P.R. 554
Ld. Raym. 317
Doug. 552
2 Pick. 528

2 Mod. 302
Str. 629
786
2 Ray. 1196
Str. 82

14 Pick. 426

4 Mod. 242
Burr. 323
5 T.R. 446
4 T. 148
7 T. 253
Str. 1181
1271

7 Pick. 242 If an instrument then containing a promise to pay money, wanting some of the requisites of it is not a negotiable promissory note, though it is evidence of a parol promise and may be established as between the parties it became, as a promissory note.

But a Parol statute in Conn. has no action can be maintained, on a negotiable note, after three years elapsed from the time of the becoming of the right of action. And the time, running which the maker of the note is out of the State, is not counted.

The law relative to the presentment, negotiation &c. of promissory notes is the same, as that relative to bills &c.

Remedies on Bills or Notes.

6 Pi. 79 The usual action brought upon bills or notes is assumpsit, and this is said to be the only action, where there is no immediate privity between the parties to the suit.

4 Pick. 471 The holder may maintain this action against all the maker parties severally and he cannot join them in the same suit. The action of assumpsit lies for the place against the acceptor, as drawer — for the indorser, against the drawer and the indorsers.

The opinions in Salkeld, seemed maintain an action accrued to any person, where name is not on the bill, against the person from whom he received it. and then the action must be brought, not on the bill, but on the consideration for it. For no person is a party to a bill, (so that an action can be maintained against him) unless his name is upon it.

7 T.R. 64. 2 Ld Ray. 928. 6 Mod. 24. 4 T.R. 521. Str. 515-6.

The holder may maintain the action against all the prior parties.

So also the drawer may maintain an action against the acceptor, if the former has been compelled to pay the amount for the acceptor was first liable.

Mr Pritty says that the drawer can maintain an action against the drawer for refusing to accept. This rule is manifestly incorrect, and contradicted by them.

Pitt. 82.

In general, any party having been compelled to pay the bill may maintain the action on the bill against any party to whose liability was prior to his own.

7 T.R. 57. Pitt. 82.

This rule presupposes the action to be upon the bill.

If one accepts for the accommodation of the drawer and is obliged to pay to any

maintain a plaintiff against the drawer
Hob. 156. 198. Str. 169. but if he accepts in consideration thereof
will not be on the bill for this acceptance is prima facie evidence of effects of the drawer in his hands.

The action will lie also in favor of a stranger, whose suit the bill supra protest against the party for whose honor he paid,
Hob. 198. Gilb. 180. and against all the prior parties. And in this case the action may be on the Bill.

It is a general rule, that an action will not lie against a person who became a party after the holder. For if it could, the effect would indirectly bring an
2 Str. 470. action against the holder as a prior party, and recover it back. But this cannot hold in favor of the acceptor or drawer or any of the prior parties — indeed in its terms it does not extend to them.

Hob. 155 Str. 121. 571. 850. 1 B & P. 451. Doug. 514. 1 Salk. 125. 2 Comyns. 2 Mod. 446. The action will not lie against the party from whom the plaff immediately received the bill, unless he paid a valuable consideration for it.

If the holder makes the acceptor his executor and dies, the right of action against
Brown. 94. 543. Salk. 292. 2 Mod. 511-2. 3 Bl. 18. Peck. 191-pl. all the parties is extinguished. The reason of this rule is that the primary liability thus dis

charged on the back of the bill, the secondary must of course be — Besides, the claim of the other parties on the acceptor who has represented the creditor, is calculated. He cannot sue himself: and thus remained, unless he is guilty of some default. In equity, when the justice of the case requires it, he may be considered as beneficial trustee.

The holder may at the same time, commence an action against each of the parties, who are liable to him on the bill. Lastly he is entitled to bring an action pro interesse — and the parties to the other actions are discharged, except for the amount of the costs.

1 Ph. 46
2 Ld Ld 25
2 Show 89
4 P.P. 601
Ibid. 182
193.

If then, in an action against the drawer or indorser, the ag pays the amount of the bill and the costs of that particular action, the ag will stay the proceedings against him, — with the payment of costs in the other actions.

4 P.P. 69
Ibid. 515
Ibid. 192
Ch. Ch. 749
Arthur.

If however an action is brought against the acceptor, the proceedings will not be stayed as against him, unless he pays in and action to what is due on the bill, the costs of all the other suits; for he is the first & principal person liable, & the first on for the.

In the former case, I admit, however, that the general rule should not prevail against the drawer or indorser, in respect to the costs

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against subsequent parties — however it does not seem, so to be established.

But though the latter may have been held actions against all, and even have recovered judgment and execution against the drawer of all, yet as he is entitled to but one satisfaction, he can have but one fieri facias (i.e. execution against the goods.)

Cowp. 515.
Ch. 162.
3 Mod. D. 67
2 Show. 464

If having received complete satisfaction against one, he should take and execute against another, the latter may be relieved, by audita querela.

1 Bur. 3. 3.
2 Ell. 5 Bur. 1
Imp. 832
Ind. 5 B. 177.
197.
3 B.R. 174.
3 Bur. 1516

The accumulation of other actions may in general be founded on the instrument itself, as upon the consideration of it — (i.e. when the action is brought against a party to the bill, — in other cases, it can alone be grounded on the consideration.

In the latter case, he can have an action on the common counts, as for goods sold & delivered for money had & received &c.

Lev. 124.
3 B.R. 174.
Tyr. 197.
Ch. 164.

And in almost every action, the common counts are inserted, after counting upon the instrument itself for abundant caution.

Ch. 248.

For the terms of acceptance & endorsement of Bills

If an instrument cannot be sued on in the corporation as a bill of exchange the courts [illegible] Merchant. But this is not now holden necessary. Nay it will never be even referred to, for the law merchant is a branch of the general unwritten law of the realm.

In declaring upon a negotiable note, it is usual to declare, that the defendant [illegible] 1 Ld. R. 185. 246.
liable by the custom of London. This is certainly unnecessary, for it is never necessary to declare on a public statute, unless it be penal.

In a count upon the instrument itself it is not necessary to allege the consideration, because the law implies one. 1 Str. R. 447. 2 Ld. Ray. 758. Tidd. 48. 2 Str. R. 845.

And in declaring on a bill of exchange, 1 Str. 286. 2 Str. R. 915. Tidd. 268.
promissory note it is not necessary to make profert, for these instruments are not specialties.

When a bill or note cannot be sued on according to its form, the proper way of declaring upon it is to state it according to the real specialty. This count may be alternate in the same [illegible] 3 T. R. 178. 481. 282. 1 B. & P. 303. 557. 2 Ld. R. 154. 1 Str. 228. Salk. 46. 55. 85-6.
it is a [illegible] power, which may be counted on as a bill, payable to bearer.

And where the note is payable to the order of [illegible] necessary allege upon it an order

2 Lord Raymond 743. Carth. 413.

operation.

An endorsee receives the bill of exchange, and it is not necessary, though it may be better, to give a receipt to him. And it ought to be made the bill — to make him the right owner — Carth. 509. Salk. 128. Str. 538. Kyd. 146. Bull. 267. 285.

cause payable to and then to mean the person to the actual holder. Lord Holt shows that the drawing of a bill of exchange is equivalent to an express promise, and the law raises one, by the custom of merchants.

And whereas the person, and upon a bill became a party by indorsement, 1 Wils. 313. 6 T.R. 559. as by the 3 & 4 Anne it is not necessary, though it is usual, to state that he became a party by indorsement in it, is not in "pro laudi ion actum fuit prout." The act of the assent is the act of the indorsee.

The indorsee may release against the immediate indorser, or sue on a bill of ex. 4 T.R. 149. Indorsee drawer, by the indorsee and have 2 Str. 743. able to himself — because in both cases 1 Wils. 574. contribution are incident and equivalent to the drawing of a new bill — and payment, and subsequent notice, in any case the same, if the indorsee was in it bank — for he may pass it up to himself — indorsee.

[illegible] the [illegible] of a [illegible] [illegible] [illegible]

3 Ld. R. 176 instrument. This cause is not necessarily
2 Ros. 511 taken, unless the instrument is so altered
that it may prima facie evi-
dence, to support the common Count.

On the common Counts the plaintiff may
3 Ch. 174 go into evidence his usual or the com-
2 Ch. 241 mon
18 Ch. 245 consideration and is not bound to introduce
1 Ball 58 the bill at all, and if he does he is not
Bul. 137 confined to read alone.
Str. 718

Now when an parte taken a bond from
the other he cannot recover on the origi-
nal consideration, for that is merged in
the higher security.

So an action by the payee against the
drawer of a bill, or the maker of a note
the instrument itself may be introduc-
Str. 725 ed as prima facie evidence of money
1 Ba. 758 lent. If the payee bring an action
12 Mod. 380 against the drawer for money lent
3 Bur. 1516 525
6 T.R. 123 he may not and any matter introduce
the bill to support it. For the low pre-
sumes he paid a valuable consideration
for the bill.

1 Bur. 373 So in the same where the action is
Cite 190 brought by an indorsee against the in-
mediate indorser.

[illegible] a bill [illegible] is [illegible]
fair consideration of money paid by the holder Bayl. 95
to the use of the obligee of the bill or the
maker of the note. For the holder, in common
intendment, has paid the value of the bill
mentioned in it. He has paid it in
effect, to the obligee or indorser, who has
constantly received the benefit of the amount
expressed in the bill or note. This reason
is not supported by authority, but it is correct.
It has also been said that a bill ac-
cepted, is evidence of money paid by the Bayl. 95
holder to the use of the acceptor. This Ehlt. 191
doctrine is however overruled by L.C.J. Eyre
for he says there is no privity between
them. Ed.

Recent, the bill is said to be primâ facie
evidence of money had and received, to
the acceptor to the use of the drawer. But
I am not aware, that this point is well
settled. I am inclined however to think it
correct. The consequence of the rule would Ch. Ca. 278
be that the holder never sues upon, in the Bayl. 95.
bill, or counts for it as a stated account Ehlt. 191
for money had and received against
the acceptor. The holder is presumed to have
paid the value of the bill, for the purpose of

Bill of Exchange &c.

which the acceptor is presumed to have effects in his hands.

If the drawee and having effects of the drawer in his hands, the bill in his defence, is endorsed to him, paid, and and expended in an action against him.

1 Ph. 269 Mod. 226 7 B. & C. 576 10 East. 232 The merits in the first place, however, must be shewn according to the tenor that he had no effects of the drawer in his hands.

Talk. 283 Vin. Ab. Bo. 1 Q. B. 35. Bur. 55. It will not be also having to be evidence of money had and received by the drawee as was made to the use of the holder of the bill, there is no question. The drawee is supposed to have received the amount of the bill the payee transferred and the holder endorsed in his name, and is supposed to have paid his money for the benefit of the drawer.

If the acceptance had been

B. W. 279 Lil. 141-2. acceptance is being given under a an account stated between the acceptor and the holder, and of course had a balance which will supposed an implied promise to pay the amount of the bill.

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Evidence in support of the action on Bills &c. 11.

The evidence in this, as in all other causes, is governed by the pleadings. That which it is necessary to allege we must have certain, it is necessary for them to prove in evidence. He is bound to state all which is necessary to his right of action, which is to be collected from the preceding notes, which I have considered.

The holder must prove that under bill as he has counted on in his declaration, or one which in its legal effect and intent is the same, was made — that the defd became a party to it.

Comp. 200. Doug. 667. 3 T.R. 178. 5 T.R. 643. 4 East 471. 6 East 13 & 17.

When the holder sues the acceptor, he must prove that the defd accepted the bill, and if the acceptance was conditional, he must prove that the condition was authorized to make it.

1 Esp. 14-15 Ibid. 24-27. 200.

If the acceptance was conditional, the holder in an action against the acceptor must prove that the condition has been performed.

Str. 212 Doug. 571.

In an action against the acceptor, proof of his acceptance that is a qualified one is nugatory, and his completion is no evidence in an action against any other party.

1 Esp. R. 15. Str. 648. 1057. Id. Ind. 309. 1 Esp. R. 143. Bul. 136. Peak R. 16

Trover will lie for a bond, or a bill to sell the property in action, against them.

In an action against the executor or administrator, the bond writing or that of his authorized agent must also be proved. This rule is true whenever one is sued on a written instrument.

Dr. Ro. 137 Bu. 1542 Sha. 399 607 Ellsb. 387

In an action against a party who transferred a bill to a second person, the holder must prove that the original action the bill to him. Proof of personal the incorporation of the instrument itself is immaterial evidence of a delivery to the holder.

Ch. 64 Ro. 928 6 Pb. 52. 10 Ind. 244. 591. 408

And when the holder recovered the bill on an original consideration or counterclaim, it can be required of him to prove that he or some other intermediate holder received it for a fair, and for a valuable consideration.

Boyt 116 6 Ind. 951. 124. 211.

If an action is brought by an insurance against the assessor or against the underwriter, the plaintiff must prove the bond writing or the first insurance — for otherwise he shows no title in himself.

Boyt 21. 225. 18 Ib. 150 Pb. 654 6 Dayt. 670. 653. 35 Ib. 175

Where there have been two indorsements, the first being in blank the holder may prove the indorsement of the second indorsee, against the indorser.

1 Bell 511.

The reason is very good, for unless the indorsement of the second indorsee shows nothing himself. And the second will hold about over many in the manner of the indorsements, so long as they are in blank — otherwise the holder would not trace a title mediately from the original payee to himself.

On the other hand, the first indorsement is an blank if it is not necessary to prove any subsequent indorsement in an action against the first indorser. The drawer, or acceptor — or the holder may sue either the subsequent indorsee in fact, and bring the first blank indorsement to his aid.

Ram 617.
Tr 633
Holt 496
Bell 1. 205
1 Esp. 180.

If a bill is made payable to a specified person or order, it is not necessary to prove any indorsement for him to sue, and as against all parties known to the drawer, the payee is deemed the holder, in the sense necessary to enable him to recover.

3 Esp. 174
4 B. 182.
8 Th. 313
1 Bl. 386.
569.
2 Bl. 194
288.
Tyd. 284.

When the drawer or indorser is sued the court must have that he could sue without, to obtain the money from the acceptor or drawee.

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Cowp. 579 Nor unless due certainty has been used, they
5 Bur. 2670 implied contract is not broken.
1 Burr. 45
1 B. & P. 712.

This due diligence consists of three principles — 1st presentment for acceptance 2d memorandum for payment, where they are necessary, and 3d the giving notice prior to the
1 Wils. 565 party is considered when the action is brought.
2 Ld. 1197 To ascertain when presentment for acceptance is necessary I will refer you to the former rules.

7 T. R. 58 Presentment for payment is required
2 Burr. 669 to be made even though acceptance was
Salk. 127 refused by the drawee; and of course must
Str. 1004 be proved as the fact.
2 Ro. 470

5 Bur. 2670 And in both cases, if the bill has been dis-
1 B. & P. 712 honoured the fact must prove that due no-
1 Burr. 45 tice has been given.

And in case of Foreign Bills the holder
1 Ld. Raym. 575 in an action against the drawer or indor-
3 Mod. 8 ser, must prove the dishonour by a protest:
2 B. & P. 713 the fact of non acceptance or non payment as
5 T. R. 239 the case may require.
1 Ld. R. 131

But when it is said that a protest must be proved, it is not meant that more than this more
Ibid. 270 necessary than to produce the protest itself
2 Mod. 256 for it imports authenticity and is prima-
Hob. 297 facie entitled to credence: but it may be proved
Peake 75 by a witness.

I will barely observe, however, that the necessary proceedings required on the part of the holder are excused in certain cases (vide supra) as where the drawee has no effects in the hands of the drawer — &c. &c. vide supra.

Whenever notice or presentment is a condition precedent, it must be proved.

It was formerly holden that in an action against the indorser, it was necessary for the plff to prove a demand upon the drawer. But this is not now law. It is necessary to prove a demand upon the drawee or acceptor, because, he is primarily liable. But the holder may sue any of the other parties, without respect to their priority to each other. As to him their liability is co-ordinate.

If an indorser, having paid a bill, sues the acceptor, drawer or any prior indorser he must prove that the bill was returned to him, and that he paid it, for without this he acquires no right to recover. A voluntary payment on his part cannot subject them.

The rule is the same as to the drawer, when he sues the acceptor, and for the same reason.

If the acceptor sues the drawer, for the money that is now paid he must prove not only the drawer's handwriting and an indorsement

Lt. 131. 132. 2 Ld. Raym. 747.

Lt. 441. Bos. & P. 379. 2 Bos. 307. 1 Esp. R. 334. note

11 East. 267. J. Mar. 18 Ch. 156

by himself, or some thing equivalent to
saying, "I and also that he had no effects
of the drawer in his hands. And of this, the same
presumption lies on him — for the presumption is against him.
On the other hand, if the drawee says the

10 Mod. 367 1 Str. 85

acceptor, he must prove the acceptance, or
amount of payment and a refusal, on the ac-
ceptor, and that the bill was then returned
to him and that he has paid it.

But in an action brought by the drawee a-

1 P. R. 405 409 3 Bos. 182 2 Ch. 614

gainst the acceptor the former need not prove
that he had effects in the hands of the latter, for
that is the presumption of law, and the onus
probandi is upon the latter. This supposes
however, that the acceptance was a simple one, and not sub modo protested — for that
shifts the onus probandi.

In the case of Walton and Kelly, which
has become a very leading and important

1 P. R. 319 case, it was determined by the Court of
3 Bl. 36. 7 Bl. 332. King's Bench, that a party whose name
Peak R. 6. is on a bill shall not be admitted as
40. 52. 224 a witness to impeach it, as by proving
18 Ep. R. 12. 85. 298. 1 Day 17. 301. that original consideration was us-
1 Binn. 258 2 Mass. urious. This question has never been de-
termined in Court — and has been differently
decided in the different States. For the diffe-

Walton v. Kelly overruled. Sp. Ct. Nov. Term 1814 Townsend v. Bush

rence and opinion expressed in a Bulletin of decisions

It is established that in an action against the maker of a note, in the indorsee, the indorser is a competent witness to prove fraud — for here the evidence is connected with the original validity of the instrument, and only goes in avoidance of it. Rock 6 Ir. 58. 117

In an action against the drawer of a bill the acceptor is a competent witness to prove that he had no effects of the drawer, and thus to show that no bill was ever given. Phillips 2 Ex. 752 Wastie v. Elly.

In an action on the bill the jury must see the bill itself, though it need not be stamped to be laid, for it probably he can produce a common copy of it or of the consideration, hand evidence of its contents. Rex v. Ely, 2 East. 446 Bp. L. 50 Ashby L. 105

In an action against the acceptor of an inland bill accepted after the bill was drawn, and had seen it, the jury decide. Ex. 1 C. 648. 940 2 Burr. 1354. 1 Phill. 540.

The bill is exhibited in evidence that it was drawn, without proving the handwriting of the drawer. Rex v. Hall 4 East. 24. Ex. 1 C. 604 &c.

If the bill was merely exposed and not if the acceptor having seen it, accepted it, the forgery is no defence in favor of the acceptor, against a bona fide holder. Nor the rule would not hold if the drawee had not seen the bill.

Bills of Exchange.

for time is an exception on the explanation that

there is a genuine bill.

The same circumstances held with respect to

an indorser, in an action against him.

5 Bur. 2699 When a defendant sued upon a bill, insists many

2 P.R. 275 into off, he admits his own signature, for

1 Esp. R. 347. that a act. for by bringing into Ct. a sufficient

1 T.R. 464 sum of money, he admits his liability to that

2 H.Bl. 374 demand.

When the holder sues upon a bill transferred

by indorsement, the production of the bill is

ibid. 209 in general sufficient evidence of his title.

There is indeed an exception, where he took

the bill under suspicious circumstances, supra

Thus where bill was made payable to bearer,

ibid. 29 it is not sufficient on the holder to shew that

it has been transferred by indorsement, nor need

he prove from whom he received it.

If an acceptor having paid a bill supra protest,

5 Ct. 163. 209 sues the drawer, the acceptance supra protest

is primâ facie evidence, of his having received

effects of the drawer.

Lowes pl. 20. In an action on a foreign bill against the

Mul. 270. drawer or indorser, the protest is sufficient

4 T.R. 475 evidence of a presentment and refusal. These

Rim. 272 are always mentioned in the protest, which

supports its validity in other Cts. And indeed other

[illegible] whether or no [illegible] from a different

[illegible] would be necessary.

The protest does not however seem to be in the receipt of production of the bill. Bul. 270. 271.

Had a letter containing information, and the authority was found in the possession of the defendant, in such evidence of notice; that evidence cannot have been admitted without producing the letter. If he refuses the paper, may from the contents. 2 Stk. 549 Peake 131 Esp. R. 5 Bak. R. 165 Bak. 50. 4

Debt on Bills and Notes.

The only remedy which I have considered is the action of assumpsit. But in common law, the action of debt per minime con-tinet will lie upon a bill or note. This action was formerly in disuse in revenue use — but was afterwards superseded by assumpsit — and now seems to be again coming in fashion in Westminster Hall. 1 Sk. 124 2 Sk. 221 Cowp. 8. 4 Term 148 Stk. 249 550.

It has been holden however that debt will not lie in favor of the payee against the acceptor, because it is said there is no privity. And I hold the rule to be questionable, for the acceptor has undertaken to pay to any bona fide holder. Wils. 85 Str. 30 Bul. 220.

It has been determined, indeed, that if A delivers money to B, to be delivered over to C — C may maintain debt against A, for the use delivering. But then was in minority. 1 Ld. 667 Yelv. 23. 2 Ld. 441 597.

P. 26 [illegible]

There is a [illegible] [illegible] [illegible] [illegible]

Lindl. 220-1.
Hedw. 486. will lie upon or lie it or more as [illegible] [illegible]
10 Ind. 78
Bayl. 94 note
Bohn. Pulk. [illegible] [illegible] [illegible] [illegible].
Ep. 050.

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Lex Mercatoria

Insurance.

By the Hon. Tapping Reeve

The Lex Mercatoria [illegible] is a [illegible] part of the [illegible] [illegible] the customs of merchants [illegible] [illegible] [illegible] [illegible] of the [illegible] [illegible] [illegible] customs are the basis of particular places [illegible] from the [illegible] [illegible] [illegible] of the country [illegible] [illegible] & are not [illegible] [illegible] [illegible] them, as they are [illegible] to [illegible] [illegible] the law merchant is a part of the general law [illegible] as such, is noticed by the [illegible] [illegible] [illegible] specially alluded. [illegible] [illegible] [illegible] [illegible] a custom of merchants that [illegible] a variety of particular [illegible] from the [illegible] [illegible] [illegible] in other [illegible] [illegible] [illegible] [illegible] [illegible] a particular [illegible] [illegible] [illegible] from the general law merchant [illegible], [illegible] the custom must be proved.

There are certain points in which the Lex Mercatoria differs from the common law.

There is [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] of [illegible]

130 Insurance

on the death of one [illegible] to the survivor instead of going to the personal representatives of the deceased. In Connecticut by usage we have disallowed the jus accrescendi. This is not known to the common law. At common law the rule prevails in all cases, except in joint stock, in a firm.

Fraud is viewed, in some respects, a different kind of thing by the common law from what it is by the civil law. Fraud in the consideration of a contract does not by the common law vitiate it. (Fraud in [illegible] may be maintained) If the fraud is in the execution of the contract then it is commonly said to be void. The fraud in the execution is [illegible] where one is imposed on, as to the execution of a contract contrary to the intention of the party [illegible].

The law in [illegible] is different. The [illegible] courts [illegible] [illegible] unconscionable, and will leave the party to his remedy at law. But where the contract contains real hardship they will interfere and give relief to the injured party.

And in the unconscionable case the contract

N.B. in Comm. when a clause found has been practised in some instances on the principle of the Roy. Nav. in our Com. Law.

[illegible]

[illegible]

[illegible]

By the common law a month is a period of [illegible] months in lunar months. The ecclesiastical courts compute by Calendar months.

By the common law, if the time of the performance of a contract happens to be on Sunday, a tender on Monday following is sufficient. By the mercantile law, it must be made on the Saturday preceding.

At the Common law, a chose in action could not be assigned. Hence, an assignment was formerly made a criminal offence. In equity, however, such assignments were protected, if made for a valuable consideration. Then assignments were made [illegible] and actions to be sustained in the name of the original obligee who had the legal interest.

But by the Mercantile law assignments of negotiable instruments were made valid, even to vest the legal interest in the assignee. This rule being first established in the case of Bills of Exchange, was afterwards extended by stat. to promissory notes, payable to order or bearer. Shipman Dig. Verm.t [illegible] the [illegible]

By the common law, when one had [illegible] a writing against another who had [illegible]

Insurance

him as drawer on a third person, to receive the money. if third persons do not honour the draft, the holder must, on giving notice, recover against his original debtor. By the law merchant, the same principle is recognized; but the meaning of the notice is precisely ascertained; which at C. L. was left uncertain.

At Com. law the consideration of all contracts which are not specialties might be impeached. But if the contract were a specialty this could never be done.

By the law merchant negotiable instruments are entitled to all the properties of a specialty, and when transferred to a bona fide holder, cannot be impeached for a want of consideration, even though it is not a contract under seal.

By the Common law, when a bargain of sale is concluded, the property immediately vests and is under the control of the purchaser.

And by the mercantile law in certain cases, though the bargain is concluded, still the property is under the control of the vendor. Suppose for example, after an agreement for the purchase and sale of

of goods, i.e. [illegible] goods being
[illegible] and [illegible] the [illegible] the
original owner and the owner is [illegible]
bound to [illegible] they may be
stopped in transitu. So if a bona fide
bankrupt had been made, the property could not be
stopped in transitu. — **Insurance.** —

An Insurance is a contract entered into
to indemnify another against any loss to which
the insured is exposed. — The contract is an
insurance if it is made against the happening
of any event. This goes on the ground of
a premium given. And it would be an insurance
if there was no premium: the premium is the
money paid for insuring the risk. The instrument is
called a policy, & the insurer, often an underwriter.

It was formerly a common practice, for
persons to insure upon events of every kind
whatever, in which they had no interest.
This, it will be perceived, was merely
gaming & was forbidden by statute, & insurances
made upon property in which the insured
had no interest were made utterly void.
I suppose it is to remove the prevailing
opinion that such insurances were void
even without statute. In Russia, Sweden
and Denmark, wagering policies are void
by the law of their municipal laws.
There are of all kinds of risks in the insurance-

Indentures

are certainly a very dangerous system, is surely against the public policy.

I think, therefore, that the English Act was already in affirmance of the common law.

Free mechanics have never been into use to any considerable extent in this country. If they should, perhaps it would be time enough to prohibit them by statute.

Papers have been allowed and been mentioned upon when they have been brought forward as evidence of a custom, or when they concern the management of the government.

The object of taking of indentures is the advancing the interest of business commerce. But outbearing no benefit assumption from indentures are frequently in which it is issued shall be interest. On the contrary, where they are used in use they are attended with very pernicious consequences to the community in my opinion, a fit for such offenders. This seems to be illegal, to discourage or oppose in customary commerce.

[illegible]

[illegible]

[illegible]

until upon the [illegible] [illegible] [illegible] [illegible]
It was determined that the plff could not
maintain an action [illegible] the [illegible] [illegible]
the question regarding the [illegible] [illegible]
of the vessel [illegible] [illegible] was not
7 Ter. 354 prevented from the [illegible] of the [illegible]
[illegible] plaintiff held an [illegible] on a [illegible]
bill made [illegible] the [illegible] [illegible] [illegible]
[illegible] the plff [illegible] [illegible] [illegible] have been [illegible]
[illegible] [illegible] a [illegible] would have
[illegible] [illegible] the same [illegible] [illegible]
of the [illegible] [illegible] [illegible]
But that contents is not the [illegible] of [illegible],
[illegible] might have been [illegible] [illegible]
opinion.

Suppose an Englishman should be [illegible]
at the time of the declaration of war be-
tween the two countries [illegible] [illegible] [illegible]
6 T.R. [illegible] [illegible] his property unquestionably [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
But this depends on the [illegible] [illegible]
stances of the [illegible] [illegible] The prin-
ciple which governs in the case of the [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
6 T.R. [illegible] It was decided in 6 T.R. [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] made during the war.

It has been questioned whether the property of a neutral residing in an enemy's country might be insured. [illegible] by the partners in the Enemy's [illegible] it has been determined in the English [illegible] the English [illegible] that the property was not enemy's property within the meaning of the statute. The insured was in partnership with an enemy, though [illegible] his own individual property was insured.

By the present law [illegible] insurances of enemies property are certainly void.

<u>Who may insure?</u> In general every person [illegible] with whom we have no commerce, may come here as individual [illegible] insurance. The Supreme Court has taken the [illegible] [illegible] are still [illegible] as formerly.

Though we have no [illegible] more [illegible] under the English [illegible] 2 & 3 [illegible] 974 [illegible] it was the [illegible] property [illegible] in the [illegible]

Indemnities

2 H. & M. 379
2 Bla. R. 371.

expressly issue was holden and to be liable.

Bol. 5

In a similar case where B paid over his money to a third
B. paid to A. the A. would not suffer A. to recover it of
B. back. This seems to be carrying it farther, a
strange way. Since the broker was the agent of both and
a payment to him ought to be considered as a payment to A.

Ex. 6 T. R. 205
Contra. Chas. a merchant
the premium from
B. who was insured
them.

The subject of his revenue. The ship is a trade-
3 T.R. 382.
Pach. 2 Ch.
2 Vesy. 226.
7 Bac. 544
6 Bac. 316
Bac. of Insurance
cases illustrated
vol. 2 p. 157.
port subject of his revenue, also the road on
which and the [illegible] It [illegible] has led men
on bottomry in many instances that men
that there are articles which cannot be in-
sured and an indemnity upon them is
void of course. Yet these the principles are mere
[illegible] roads. That is roads which are im-
portant or expected commerce to [illegible]. Then
[illegible] in question, whether the insu-
rer would not be liable to the insured if he
knew that the property was to be [illegible] goods.
A certainly would not be consistent with
Bac. 343. the principles which have been adopted in
analogous cases as to [illegible] and
[illegible] that such indemnities
are absolutely void. On the contrary then
[illegible] formerly expressed sentiments of a [illegible]
in.

Will an indemnitor be liable who in-
Park 257
Dawes.
Ohio
Mich. V. 2 Mass.
sures property as a carrier, prohibited by the
laws of a foreign country? The Eastern [illegible]
settled the question that such indemnities
are not invalid, for [illegible] the [illegible]

[illegible]

[illegible] of [illegible] [illegible] [illegible]

Insurance

party procuring the ~~blockade~~ insurance was ignorant of that fact at the time of procuring it and a tort ensues, the insurer must indemnify the insured.

If the blockades or cruisers are established in time of war this is no question on this point.

But it has been established that pacific blockades may be considered in a dispute of blockade though to approximate the nature of actual blockade. This was certainly at first an infringement of neutral rights from this unique character, nor does it seem have much multiplication extended the principle to the right of blockading without an adequate force, a whole coast.

Right of Search. It is in vain to explore the right of search for contraband & aid in merchant vessels. If this right is

2 Pitts 7th ed. not allowed, the term of neutrality on this point was a dead nullity. This has always been admitted; and it frequently speculated on treaty. For a citizen of one belligerent, to supply the other with these contraband goods is treason — though it be a contract to do it if he is willing to aid some the rights of war is no offence.

Ibid. not illegal John. Cas. 1.

Ships of war are not able to be searched

[illegible]

[illegible]

[illegible]

Rec. & to cap. wages — Gen. 175. Tolm. Summ. ad

The new description of property to which our attention must be directed is Captains and Seamen's wages. The mercantile class is so constituted as to make the interest equal upon all who are concerned in a venture. Upon this principle it is that seamen's wages are paid

7 & 8 Vict. 57 sec. 3. Ther. 1844 1 Rob. 1 fin.

wholly out of the cargo. The reason why seamen's wages are not allowed to be insured is, that they may have a strong inducement to exert themselves in preserving a ship, even by the perils of the sea, or the capture

16 Mariam. 286.

there is a peculiar kind of seamen in America who outside all the seas seem to be manned. Seamen may insure parts which perhaps leave no doubt, as well as the owner.

I have observed that insurances may be made on the freight, but it is, as I said the same in all cases. In this case I have under which the insurance ought to be insured.

The risk must then commence on the given with and be made if the ship is ready to be fitted for loading and the day is last before she is loaded the insured can no recover. But if the thing of the goods are put on board. Upon the question not

[illegible] <u>no lien [illegible]</u> to the place where the cargo is to be received in which the freight was to have been paid the underwriters would be liable.

<u>Goods</u> may be insured; but can the <u>profit</u> on goods be insured? This must I conceive (i.e. the profit) still be uncertain. I apprehend that the general law merchant does not allow the profit on goods to be insured. In England and France this has certainly been the law. And it is a little remarkable that there has been but a single decision in the United States on this point. This was an insurance upon a quantity of molasses from England for Canada. The policy was a valued policy. There are two sorts of policies, valued policies and open policies. In the former the sum insured is stated precisely, and no enquiry as to the value is admissible. In the latter the amount of the insurance is uncertain and it depends on the real loss, which must be ascertained by subsequent enquiry. The difficulty in the case in fact was to know the amount when [illegible] is insured, who claimed more than the value of the goods — namely

It is now however in Engd. settled that the profits on goods are insurable in that ct.
2. East. 545.
6. East. 316.
3. Caines, 245.
1 Johns R. 433
Un. Insur.
[illegible] Day 108
[illegible]
Henrick v. [illegible] cited in note 2 East. 549. which decides profits to be insurable.

<u>Valued policy</u>

<u>Open policy</u>

consideration given for the profit. There was not in this case an insurance, eo nomine, on the profits, and the decision ~~to have~~ passed on the principle that as the policy was a valued one, an enquiry was inadmissible.

× In a suit on a valued policy, for a partial loss, it is treated as an open one and the interest cost is the measure of damages.

Every policy on profits, must of necessity be a valued, not an open policy. 1 Johns. R. 439. The insurer on the profits is liable notwithstanding abandonment of the goods to the insurer on the Cargo. Ibid.

In Conn.t it has been decided that the profit of a voyage was not an insurable interest. (not law. vid 3. Day 108.)

Contra. 2. East. 545. 6. East. 316 3. Caines. 245. 1. Johns. R. 435.

Decid.d in Conn.t that profits are an insurable interest. 3 Day. 108

Clear it is, that unless there is a real interest the policy is a wagering policy. As we have no statute on this point it becomes very important to ascertain how these insurances are considered in the several [illegible] [illegible].

[illegible] 57. [illegible] 17.

The British Courts were led to adopt the rule of giving effect to these insurances, because by an established course of precedents they have given them countenance. But allowing the correctness of those decisions there is a manifest distinction between wagers and wagering policies.

A wager is always made to gain something. But an insurance is always made, not to gain any thing but to indemnify one against a loss which he may sustain. Certainly then if he who procures an insurance has no interest in the property insured, he can sustain no

[illegible] and [illegible] [illegible] [illegible]

Jurisdiction

148. [illegible] not to be allowed in this country.

Phillips 156 But supposing that wagering was implied

would be wagering policies, on the same

Stevens 239 principle he entitled to recover Sir 10 Q.B.

— 2. waders were expressly discovered

Marshall 77 in policies of insurance. The 17 & 18 Geo. 3 c.

Lt. Ken. 76. 77 a decision in a Court of Law, the Court of

Chancery, still exercised their power upon

Ib. 250 issues under policies were offered.

But the years after this changed their

opinion and decided against the use of

[illegible] in exploding the [illegible]. After the obiter

Ib. Bur. 685. 8 T.R. 23. 9 G. 2 was made several cases came

up for decision, which are cited in the margin.

Doug. Pelly v. Hesh. The [illegible] is confined to insurance on the property of British subjects and the

[illegible] respecting wagering contracts

in connection with regard to insurance

[illegible] on foreign ships.

The first decision in England was, [illegible]

[illegible] The allowance of wagering policies

was after the Court of King's Bench

had stated in the case of Pelly v. Hesh. [illegible]

[illegible] the [illegible] had [illegible] power [illegible]

[illegible] inconvenience [illegible] the [illegible]

[illegible] of the [illegible].

Who may be insured?

Whoever has an [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] contract [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] be [illegible]
[illegible] [illegible] [illegible] be insured;
[illegible] [illegible] [illegible] of insurance.

There is a species of [illegible] [illegible]
[illegible] [illegible] either [illegible] [illegible]
[illegible] contract [illegible] [illegible] [illegible]
of insurance. [illegible] [illegible] [illegible] of [illegible]
prize [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] expectation [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] may be insured.
The principle [illegible] [illegible] [illegible]
[illegible] that he who has a just expectation
of an interest in property may insure
[illegible] [illegible] [illegible] [illegible] [illegible] 8 Salk 13.
There has been a question whether [illegible] 1 Bur. 315
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] it may. [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] 1. supra
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] are insurable. [illegible]
[illegible] [illegible] [illegible] the [illegible] of [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
of [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

Proof must always be adduced by the insurer to show, that the amount of the insurance and the value of the property were so greatly disproportioned, that the policy must have been a wager policy. Bad faith differences not be proved.

Parsons III

Of the insurance of the insured after risk in one underwriter when he has assured. The parties have prohibited all reassurances except when the insurer has become insolvent or bankrupt. This is undoubtedly for the benefit of the insurer, whose property was originally insured. But he can so much reassure and claim.

(* the exception in the cases of insolvency & death)

Public insurance is special from a private one. When the value of the goods is known & the difference of price, there is no further insurance. It is immaterial how many insurances are procured the loss to be have been satisfactorily. But if it is uncertain the value of the property from an underwriter to be insured, it is an certain doubt the others. Thus one of the underwriters may be called on to insure and the insurance with the others to contribute their ratable proportion towards the insurance on

Parsons 242.

but these were different and appear to have been made when the Courts were not so well acquainted with the principles of the mercantile law. The rule adopted by them was that those who first underwrote, were first liable, and the others were required to pay back their premium. 2 Mar. 13

It has been a question whether, when persons have different interests in the same property [illegible] may insure to the full value, and recover [illegible] that they may (as in [illegible])

A Russian Merchant being indebted to a merchant of London made a consignment of goods, promising to send the bills of lading to his creditor and afterwards sending the same to another Russian Merchant, who was also his creditor. Both procured insurances to the full value. [illegible] [illegible] the consignment [illegible] [illegible] the rule [illegible] would be the correspondent with the principles of the merchant law, [illegible] to recover according to his interest. 1 Bur. 179

If the voyage is unlawful, the insurance is unlawful. A voyage is illegal though the commerce (that is the articles carried) may not be prohibited. When the business of a country [illegible] particular

15.

a question fairly arose, had to matter whether the prohibition is confined to foreign persons or extends to the whole commercial world, a doubt would be unfounded.

The case decided at 1 Ves. & Beam. 351 was in the East Indies, and the prohibition was held to extend to a voyage from one port there, land to another. The question arose under this article whether a circuitous voyage, as from the country to Europe and thence to Madras, was within the terms and it was decided that it was.

1 Ves. & B. 31

But of the Defendants in that case was a native East Indian resident in America and the question was whether he was included in the provision of the treaty and it was decided that any person whatever, be a foreign country was deemed entitled to the benefit of a treaty for the purpose of commerce, as if he was born there.

1 Ves. & B. 430.

Rio Ro. Exceptions may be made on account of some restriction subject to certain exceptions which will be mentioned

No insurance be adjudged the insurance
assumed of the insured is valid. Nor is
an insurance adjudged illegal prohibited
from under or wager. Such policies and any
other risk is insurable.

The perils are usually ascribed to fortuitous
happening perils of the sea, capture, arrest
of princes, pirates, enemies, letters, jettison,
barratry of the master and mariners,
and all other perils, loss and misfortunes. Such perils will insure against
anything which is a subject of insurance.
Suppose an insurance is made against
perils of the sea, and the vessel
insured being sunken by stress of weather
on the coast of an enemy, is captured. So this is lost by perils of the sea
or by capture. The rule is this. The causa
proxima is always to be considered. The sinking of the ship and
the capture occur. The question comes
up in Court. A vessel was insured
against other risks against fire. The
vessel was taken by a French privateer,
plundered and then burnt. The insurer
said not insured against fire
and the assured insured against.

for a loss by fire. But the Court considered
it as a loss by capture, and held that the
underwriters were not liable.

By the law merchant any loss to the ship
subjected the insurer, except that
for a partial loss not exceeding 3 per cent
the insurer were not liable. But in mod-
ern times, a memorandum is usually
inserted in the policy which has altered
the general provision of the
old mercantile law. By the memorand-
um, no recovery shall be allowed for a
partial loss on "particular articles" — and
on others there shall be no recovery unless
the loss exceeds 5 per cent, and on all others
not, unless it exceeds 3 per cent. The
articles first mentioned are corn, salt
fish, flour, fruit, and seeds — the se-
cond class comprehends timber, corn,
pulse, hemp and flax & tobacco.

This memorandum arises out of the
operation of the policy, which must be re-
garded as its original and ordinarily com-
plete the memorandum.

But the operation of the memorand-
um then becomes explicitly, with regard
to the loss of personal or the ship the grand

[illegible] a reasonable sum for a partial loss. By the general law which here is a partial one, upon the principle [illegible] is insured a loss of the ship [illegible] the freight arrived safe on board and paid, the owners to have the rest, and which all are bound to contribute a proportion.

With regard to what is insured by the second exception — "unless the ship be stranded or a total loss" [illegible] the question was whether the ship was stranded in her voyage, the evidence was doubtful for a partial loss if such loss were not accounted for to stranding.

8 Mar. 1550
1553.
Pasch. 11
Ed. VI. rot. 26
4 Ed. VI. B.R.
Dorset
10 Eliz. rot.

[illegible] the loss happened by the stranding [illegible] the [illegible] considered with the [illegible]

Where a ship has been lightened through the mere danger of the weather or enemies if she afterwards ground or strand the evidence is not doubtful as the contract

of accession

Sonna 380. There is always an implied condition on the part of the owner of the soil, that it is navigable. In the case the highwaters would be above the hostile ships, yet the property in land on the shore extends to the middle of the river in a bay or harbor or mouth of the sea, the waters are distinguished as bays, harbors and mouths of rivers and the highwaters are taken.

Some of the [illegible] occur on shore the English [illegible] the decision.

Some persons dispossessed an alien enemy entered on board a vessel and [illegible] and on an action a [illegible] in an [illegible] Tenn. 48. Silas. 220. Beaver. 113 Gabr. 464. decision has been stated to be opposed to the [illegible] law. Possession indeed, [illegible] of the decision which on the ground of [illegible] of the owner by the [illegible] law. But I have seen the opinion of Lord Hale which does not appear in the report, in which the expressed opinion that the ground of the decision was that the

Somerset. 78 vessel was within the bodies of the country and of course was recovered by the

rules regarding common carriers, in a
manner which are liable at all events.

In order to change the manner with the lapse
of ages I have adopted securing the con-
veyance of the rich. To enable him to
keep the rich continue the common
important question. If the incumbrance
is for a limited time then can never be
any objection on their behalf.

Roads on Roads

The rich are roads commencing
on nothing then into the roads, for the pur-
pose of conveying them on roads, and
it is otherwise established in the rolling which
is commonly the case. Common roads
are the "rich" to commence from the
time of nothing to roads on roads and
meeting with the one roads beyond
roads of charges. We commence then
the are placed on roads the rich attach
to. Now if the roads are incumbrance remove

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58.

from on board the vessel in which they were found placed & accepted the underwriters in question or. Lord. They were received from the Ship, his Lordship's conclusion, that if the ship should become absolutely abandoned the owner of the goods

Owners and crews were received from Swansea to Gibraltar with liberty to land the crew in board another ship to be transported from thence to some other port.

When the ship arrived at Gibraltar there was no vessel going to the port where the crew were detained. They were taken and put on board a Transport, from which they were landed and the seamen were lodged there.

The assured insured provide for the land in after crew, but if they are lost with and the expense of an extraordinary de- ceiver of the assured the underwriters are liable.

The owners of the goods have a right to call upon the Shipowners (without sal- 7. Th. 236 vage) to land the property. This obli- gation has been taken, that if the goods are put on board of the ship, the in- surers are liable but if they are put on

board of boats procured by the owner of the goods, in lieu of public lighters are employed, the insurers are discharged. I doubt very much whether this decision would be sustained as law and reason. There is certainly no warrant in it. Morris 166

I have observed that the landing must be made within a reasonable time. This is the general rule; but the time may be regulated by the usage of the adventure according to the course of trade.

A ship and goods were insured from Bordeaux to the coast of Guinea, or to the coast of Newfoundland in another case; and after coasting for a considerable time, and selling the cargo in small parcels without landing, she was captured, and it being proved to be the usage and course of trade on that coast, the Ld said that it was unnecessary for the proprietors to land the cargo, and suffered them to recover of the insurers. Park 314.

It is a similar case, of an insurance on goods till safely landed on a certain spot to a stranger. The ship on a certain of indemnity of arrest, or by capture, was allowed to prove the usage of the trade, which had only been pursued for three years, to justify a delay in landing the goods. Arthur v Hunter

Park

[illegible] for the assured to give public notice to land their goods and on that [illegible] the insurers are [illegible] for [illegible]

Commencement & continuance of the Risk on Ships.

The risk on ships insured from the time of their sailing; and if they are compelled to put back and anchor in port, the risk still continues.

If the insurance is "at and from a particular port" the risk commences upon sailing. If however the voyage is unreasonably delayed or given up, the insurers are not liable. Otherwise they will be liable from the time of unexpiring.

Does cover this risk continue? All the time the ship is at sea continuing on the supposition of a general policy at & from A to B. It is supposed that if the ship arrives at the port and anchors safely at the port, the risk in such case is determined. But it is usual customary to insure a share of this risk from A to B, safely at anchor 24 hours. The risk on the goods may continue longer, namely until a reasonable time has elapsed for their unloading.

What is meant by the ship's being an-
chored in safety. A policy insured from
A to B, with the common clause, continuing
in the risk, until she had been safely anchored 24 hours; 5 Pet. 6.
was issued after the expiration of that time, for some
purpose during the voyage. Barratry was insured against
It was holden, that the risk was determined, before insurance, and
the insurers discharged.

Cases also to this in the case where a
ship was insured for three months, and
arrived near the month three days
before the expiration of the time, and be- 1 B. & P. 260.
ing pursuing her voyage until three days
after. Held that the insurers were
discharged.

The next case was of this kind. The ship
arrived, and was anchored and before the
expiration of the 24 hours, was ordered to sea
from quarantine. Held that the insured
not arriving in safety, and that the
insurers were liable.

The old mercantile law was satisfied with
the arrival and anchoring of the ship, and
gave the insurers discharge from that
time, tho' the ship was lost immediately after.

Some comments is made here, of the
Stand. of Insurance, and to continue in
24 hours after the arrival, in this case.

Policy 248.

Stark R. 21

Insurance

(82.) an are and liable for some loss which hap-
Stb. R. 47. pen in a place far from the port in the
stream & neighbour after the ship was an chor
moored 24 hours in safety.

There is an insurance against water, distinct
from the vessel and from the goods, & upon
Mar. 341. all the furniture and tackle, and provisions.
These are expected to remain on board and
4 Bl. R. 206 of course if they are lost and accompanies con-
veying the voyage, or which flowed from ne-
cessity on shore the underwriters are liable.

If there is a particular custom or usage
of trade different from the general one, or
it will be of the mentioned in the policy
Dougl. 490. because the insurer is supposed to be acquain-
ted with it. If it is common in insurances
it inserted a clause giving liberty to "touch
Dougl. stay and trade" on their voyage. This is
given the term merchant means in the correct
Wilson course of the trade. There is a case in
Dougl. where the principles on this point
are explained. If there are two courses
ordinarily used, the rule is the same as
Park. 91. to either.

It is customary in passages to the East
Indies to employ the insured after her ar-

rival in coasting from Madras to Calcutta or to Ceylon and other parts, that they may not remain idle while they are obliged to remain there. These voyages are covered by a general policy of insurance on the hulls for a year. There is one case where the insured in the policy was "to trade" or "to trade" [illegible] p. 50. the words "and trade" were the second in England, decided that the ship had no liberty to trade, and therefore the insurance was discharged in the vessel remaining in the port for the purpose of trading. A British insurance now takes place in this country (Act 57 Geo. III. c. 19 1812)

Insurance of the risk at sea.

The risk in this case is called the risk at sea p. 77 1850 as the risk on the ship. If the vessel touches from one port to another to procure the freight and is lost on her passage the insurer is liable though the freight is not on board. 3 B.L. 502 6 B.P. 470.

The risk commences on the vessel with the receipt of the insurer under the sense of necessity. The insurer indemnifies against perils for a risk which they were acquainted. The risk assumed should be sufficient to procure [illegible], and in a

to induce them to act and alter of mere
without any intention to use them, and
inserted directly on the day spec. It was
foreseen that the insurers were discharged
5.5.1848 because the letters of hand would place
before the master and seamen a strong
temptation to collusion and thus increase
the risk.

But it cannot whether this case can be
supported on principle, for it is much
fair no intention to commit barratry
should cannot be a completion of
the insurance, unless there is an actual commission.

In another case where the letters of hand
were not accompanied with a certificate
and of course were no authority
to cruise it was decided that the insurers
were not discharged. It would seem
that from this decision, if the temptation
to collusion arises from a letter of hand
properly authenticated the insurers are
discharged and if from a letter of hand
not properly authenticated that the insurers
are liable.
5.12.1797 But in this case it did not appear
cruise and on this ground the insurers were
held liable because it was overcharged in the
merits and this is one of the rules mentioned above.

Of the Policy

A policy is a written agreement between the parties, the insurer & insured. The engagements in the policy are all to be performed by the insurer.

The insured loses the policy, the insurer is prohibited in the course of the trade from giving up the money received on account. Yet in an action in the insurance for the premium, the policy is unnecessary & not received in evidence.

The insured loses the policy & in the policy interest or no interest, the same case, wagering policies are void. Such a clause is useless.

Policies are of two kinds, open & valued.

An open policy is where the insurance is described upon the property and in which the value of things insured must be proved on the trial.

A valued policy is where the value of the thing insured is settled by agreement between the parties and is in the nature of liquidated damages so as to prevent the necessity of proving it on an action by the party the plaintiff.

The insured loses a policy & insures a second time the same property with the premium in the policy & received the money on the policy for the premium. 1 Burr. 5 3 2 8 note.

Insurance

168\. A valued policy is not to preclude the underwriter from shewing that the assured had no interest & the policy a wager.

[illegible] insurance will be made [illegible] interest [illegible] the valued [illegible] policy [illegible] a wagering policy. [illegible]

[illegible]

But suppose the underwriter has insured a cargo valued at 1000 £ when it is not in truth worth 100 £. If the real value was concealed by the assured it was a manifest fraud and will discharge the insurer. Suppose the disproportion had been communicated to the underwriter at the time of procuring the insurance, the contract would then be a wagering contract and therefore void.

Where the [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Insurance

108

other to an agent and has never been given
notice of a determination to withdraw
from the agency, shall he still be bound
to procure insurance when required
thereto by the agent?

Nov. 22
1788

If a merchant owns an property both
in his own and in another state is it
necessary for the agent to insure
the property

The resolution of the agent. It is not
the agent's duty to insure unless
as directed or unless a person represent
that the underwriter is one such fact
in which the insurer are interested, in case
of a loss the assured will be allowed to
recover of the agent the value of any
insurance upon which the assured has
relinquished his interest and subrogate the
former.

The question respecting whether or not
the agent ought to undertake to do any
thing and fail is liable — the agent
would be a more indemnifying. But
in this instance understanding from the
underwriter and in consideration
of the agent's being in the country

[illegible] [illegible] [illegible] [

Insurance

inconveniences having arisen from this Statute, and several suits have been made in which Commercial matters to proceed in it.

The Writ should be chargeable upon Demurrer, and when issued the Cost to make the interview should be from that Ship and on other suggestion frequently is received and refused, from ex-parte.

But in some cases, as where property is to be brought from distant countries, it is impossible to discover the name of the particular ship which will bring it, and the interrogatories in such cases are on "the ship or ships"

Lower. 104.

The species of the vessel should be also mentioned, but if by the mistake the ship was not applicable in reward or minutiae the interrogatories would still be good

Privateers and Letters of Marque should be insured as such.

Top. 1. In Commercial, the name of the Ship should be mentioned in the interrogatories "or any other master" is insufficient. And in Prize cases if there were in any instance Bem-ploy the Capt. named it would be an-

stated as a ground in the insurance and in ~~both~~ the policy.

The situation & matter of the insurance must be named, though not specifically. 1 Term 299.300.

Bottomry bonds must be insured eo nomine. 3 Burr. 1394.

If the goods are specifically named the insurance attaches to no other.

The wages of seamen may, with respect to bottomry bonds and all others make a difference. As in the India trade custom. Park 225

Jewels are included under the term goods and merchandise.

There are certain articles which must be specifically named as the master's clothes, Park 20. ships provisions and goods lashed to the deck.

Insurers trade to the West Indies usually write thus in their course "Goods on deck and on board or so." This renders the insurers answerable as to any goods lashed to the deck.

And the question whether coin, jewels &c is within the denomination of goods — if they are carried not for the purpose of commerce, quaere. 4 Burr. 1490

The voyage must be accurately described
the place where the risk is run, and the road
to which the ship is destined, and if this
is not mentioned the insurance will be
discharged.

Goods were insured "from Genoa to London."
The cargo was put on board at Sorbara
and went to Genoa where the ship came
aground, and as a ship according the
Lorbiy was found to be discharged.

Where a vessel has liberty to proceed to
Leghorn or Naples it must be construed to mean
with a discretion.

The insurance was made on a ship
bound from Baltimore for Cadiz. She was
cleared for Falmouth, and was taken
before she had arrived at the divisions
named namely before she had left the sides
of the. The insurance was discharged.
2 B.M. 348. It is agreed on all hands where there is
doubt an intention to deceive merely the insurer
is not discharged. Thus goods had sailed
from this port. The 6th was upon this ground
Bordell
that the voyage was not truly described
2 Ch. 294
2 Ch. 90. in fact. The voyage to Cadiz was not
in the contemplation of the parties

liberty was given in a policy to trade in Portuguese Guinea, and the objection was taken thereupon and was held. It was holden that the insurers were liable, for it was optional with the assured to make use of the liberty which was given them or not.

It happens frequently that after insuring to a certain point in the voyage, fears are suggested concerning which the terms of the policy do not extend to the jurisdiction of the assured to the insurer of their intention in the insured particular circumstances from the assured to take a particular course, contrary to the intention and the original intention, the insurers are discharged. 1 Pk. 102.

The words "lost or not lost" are introduced into policies, to cover losses that may have taken place unknown to the insurance. This is a term of art, and extends to particulars not specified in the policy of loss, is not proved or acknowledged the insurer will be liable.

Another clause is "warranted free from all average unless the ship be sunk, burnt, or

do carry this proper to cover the risk which is undertaken, and the expense of the insurance for in case of a loss he would sustain the damage. Over and above what the law would require as a security to the underwriter and manner, the insurers must have for.

If in the cover there is a total loss the insurer may be then made liable for more than the sum, with the expense incurred in endeavouring to save the property. This clause is not any benefit to the underwriter, he receiving nothing from the property of paid to cover a trader in return than they would premium he expected to use.

The receipt of a premium must be given to the policy, though it has not been paid to as to prove the insurer from receiving an action on the policy that he has received no premium.

I have now noticed the policy, and the memorandum, which is annexed to represent the operation.

The policy also is an instrument never be altered where a mistake has occurred than be altered by the interference of insured — though it was not made on the occasion this [illegible]

testimony must be introduced into the case to prove the mistake.

In Conway when the conveyance made on a mistake in drawing up a life policy this intention of the parties was allowed to be proved by parol. In 1 Atk. it was decided that when a policy differed from the label of the ship may make it approach to the label. And in 1 Vesey the Chancellor observed that there was no doubt but that the Court had power to relieve in case of mistake in written contracts.

Could parol testimony in mercantile transactions be introduced in a case of doubt to ascertain the meaning of a policy? Issue examined this question with some attention & seem convinced that it would be extremely inexpedient to allow a written instrument to be varied by parol. Have been at a loss to find any such decision; it seems to be reported in a number of settled cases allowing this to be done. Should be unwilling to be any other determination.

Conway 2 Rose 1. 1 Ves. 317. 1 Atk. 545.

Cath. 444.

Warranties.

There were warranties added to the policy in the nature of indemnities which are unnecessary on them & that warranties can obtain must be expressed on some

[illegible] as the [illegible] may be ascertained. There are in the [illegible] of [illegible] proceeded, and in and the [illegible] in the [illegible] of [illegible] and [illegible] of the [illegible].

The warranties are in [illegible] as [illegible]. They sometimes are present and sometimes future as that the property is central, as that the ship carries [illegible] in the first case, or that she shall carry before such or time [illegible] in the second. If the warranties are not complied with the underwriters are discharged from all liability.

There are various implied warranties as that the vessel is seaworthy, shall not (see p. 200) deviate, &c (see page 200)

If the warranties are not complied with the insurance is considered as void ab initio.

Warranties are always to be construed strictly and literally, and however immaterial may have been the breach in its consequences the policy is avoided.

Thus where the policy was on a vessel and round to sail with 10 seamen and 2 boys and actually sailed with 9 seamen and 3 boys the insurer is discharged.

But a representation not inserted in the policy differs from a warranty. To avoid the policy it must be false in a point of materiality, and if not material it cannot avoid the policy. Park 788. Park 10 12. 2 Ch. 70.

It is a matter of no consequence whether the loss happens from the non-fulfilment of the warranty as from any other cause. For from the moment that the assured fails to perform his warranty, ab initio the contract is considered as void. For property is warranted to be neutral when in fact she was not so; and the ship is lost by a tempest the wound of neutrality was not the cause of the loss but the injury is not liable. A ship was warranted to sail from N. to B. with 50 men she had on board but 46 and attempted to take on board the others, which the Dutch seize a few hours after the sailors set out to sea and they saw that they had on board less than the complement the insurers were holden not to be liable. 1 Ch. 348. Park 606. Park 70 Miller. Park 790.

This warranty must be on the face of the policy — if it is on another paper and referred to the policy it is a warranty but a representation.

The capital warranties are neutrality & viz. Concealment, validity of the ship & particular trade, the enemy and Neutral property.

Express Warranties

1. That the vessel shall sail before a
Camp. 704. certain day. Slotter is not concerned with
whether the vessel arose from a sound
title assured or from necessity, the ci
ircumstances are not liable; for the policy did
not attach. Warranty was made that
a ship should sail after such a day (on
account of the dangers of the season) from
Martinico with liberty to touch at Guad
aloupe. The sailed before the day from
Martinico, notwithstanding an intention of sail
ing and on her voyage, had designing
to go to Guadaloupe and return to Mar
tinico before setting out on her voyage.
But her master extremely considered
proceeded directly from Guadaloupe
and on the happening of a loss the insur
er was holden not to be liable.

There is said to be a decision opposed
to this principle, but on examination it
will not be found so. A ship insured
was to sail after such day from January
without specifying any particular port
to sail from. She did actually sail from
Jamaica before the day, but not with
an intention of going on her voyage until

proceeded to another port in the Island
[illegible] on the way for the purpose
of pursuing Convoy, which it had left
before the storm. And was obliged by an
embargo until two days after the ar-
rival of the Convoy men had been landed. But this ship
pointed to no decision. For [illegible] a final
[illegible] of the non-arrival of the Convoy
no attention to recall and of the course
to obtain a convoy. The vessel then did
sail from the island before the time specified,
and though she went and off the
road, yet there was no treason of man-
ceuvre, since she went in pursuit of con-
voy. If the road were for any other pur-
pose, it would not have commanded
the commencement of the voyage.

[illegible]

There are two convoys appointed for the
[illegible] 10 Mar. 166 [illegible] the convoys are bound to sail
2 Jan. 1265 [illegible] with the merchant ships [illegible]
[illegible] the Lord the [illegible] to
the insurance.

It is said with convoy [illegible] or
with convoy for the voyage [illegible] the
[illegible] these words make no
difference. [illegible] 1 Ch. Ins.
[illegible] the convoy
but if the ship goes out in company or
2 H. P. for or the convoy was appointed to protect.
551. Mar. com. Then it is a sufficient compliance with
the warranty. [illegible] on the
[illegible] of the jus belli et pacis.

There are some cases which fall within
the principle which are a little different
from those I have stated. There was a
[illegible] for the West India trade at
[illegible] Vessel was [illegible] from Barbados
with warranted to sail with convoy. The
was accompanied on her voyage to the
[illegible] of Rendezvous with a frigate to
[illegible] but the [illegible] did not
Park. 269. arrive in time and [illegible] sailed to
[illegible] the [illegible] the
[illegible] the was considered as sailing with convoy.

Vessel was ordered to sail from Gibraltar to join the convoy bound for the Straits of Gibraltar. He would first go to Lisbon under the protection of a single man of war and being separated from the Stag (which had been appointed by government to convoy the Spanish trade to Lisbon) judged it best to bear on for Lisbon. Held to be a sailing from the with convoy.

2 Bd. 111

There are particulars under which are to be observed. Right: The course of protection taken pursuant in instances. A to B with convoy and from thence to C. The vessels at B and at Gibraltar commenced their voyage to C without convoy and the circumstances are clear.

He implied in a warranty to sail with convoy, that the vessel should sail without any interruption if she was to be recovered from an enemy. A chain fleet the vessel under the convoy and the protection of the convoy. The ship arrived around at the place of rendezvous. The convoy was then lead or under of war being detained on the same convoy, sailed with that and arrived and sailed convoy without putting in at intermediate ports. The circumstances were held to be well found.

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the man of war was to have received of that company. The Chief Master denied to obtain Charter instructions from his land he and having power to oblige them, they acquitted that course and accepted them. Then he complied those additional Charter instructions which the ship held.

Park 373

It has been a question whether in such power Charter instructions are absolutely necessary & it was apprehended that this is considered as a condition precedent under all circumstances to the validity of the policy. If the Charter instructions can be obtained the insured are bound to pay them, but if they are not able to procure them it has been holden that the insurer will be liable.

1 Bac. 5.
2 Bac. Ab. 164.
Park 317.
2 Th. 250.

The ship master continues with company if she can, and if he proceeds to sea in her after the insurer will still be liable

Earth. 216.
1 Law. 340.

The master of a foreign ship is applied an account of some business to such an till has been after the company in a British harbour, notice to his owners to consider them, the insurer was not holden liable in this.

Park 349.

There is a case where the ship was taken from Gottenburgh with oil on board, and was detained for two months and afterwards on a voyage passing the harbor and passing the squadron she called and said not being able to produce sailing orders that ship was captured, and the insurers were holden liable.

3. That the property is neither Neutral on the subjects of any country adjacent to the belligerent, this is a rule to be construed as they more than bind that the property is neutral. The ship must be considered as not to forfeit her neutrality by violating the laws of nations. And if this rule be not complied with, the insured of Barrabas is not one of the risks assumed will not be liable.

If the property was insured neutral at the time of insurance, though at the time of the loss it was not, the insurers are liable. But if it had been enemy property at the time of insurance the insurers would have discharged the insurer. In the case of Gibson & Bright & others from Jan. 1 to Rotterdam warranted neutral. Was neutral throughout, after the entry of the

Sloan & Parkin

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8 Cr. 1 Marsh. Ibid. 278. ship, she was captured, and the assureds were allowed to recover. The insurers assume the risk of future war.

A judgment of a foreign court of condemnation for Ibid. 258 breach of neutrality is conclusive evidence of the fact and an insurer is concluded [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Where however the judgment of the belligerent [illegible] condition rendered in a case that shall be considered as conclusive evidence of a want of neutrality & [illegible] the courts have been holden [illegible] & have not been permitted to contradict this evidence.

There is a case of this in condition where a vessel Ibid. 268 was condemned by a French tribunal [illegible] a port in Norway and Denmark to be an enemy &c.

But if the grounds of the sentence are not stated, the judgment is conclusive Peake 34. and the insurer will be discharged.

This rule has been established in all commercial nations except France.

Park 96. If a condemnation of a vessel as enemy's prize in a foreign court of admiralty [illegible] be taken to afford a sufficient ground of presumption that she was condemned as enemies' property.

The Emperor of Russia has been charged with having to expect with the reason of indemnity when the war supposed to be established after mutual grounds had thus called adhere to the rule

Doug. Guie Amen 9 T.R. 581.

Bird this condition has always been recognized by the indemnity, for the indemnity, as made and those rounds do not necessarily lead to the consideration of a wound of neutrality, the reason is not conclusive evidence against the warranty. Thus when a ship warranted neutral was moored from L. to Rio and the course of consummation was thus, "viz. the distinction, we was to the Bepkin Island & Sarquiston Island & Rodd and Lond. with 80 bbls of powder on board we declare the good faith" It was under and consumed against the warranty of neutrality.

7 T.R. 593.

The ground of all the cases where the indemnity has been made doubtful, is that the indemnity may have been paid on other grounds than the wound of neutrality.

Doug. Bernadi Mottam 154.

If the property is warranted to be neutral it cannot be changed in any other way than by vacating the contract after loss & when the vessel has been captured that it was not neutral

Stev. 340

Therefore the indemnity is a matter of fact, & cannot be inferred from the insurer with the broker.

Doug. 574. Grant v. Mottram 2 Str. 661.

This point was expressly decided in the case of Grant v. Mottram, where it was contended, whether the condemnation proceeded on the ground of enemy property or not.

2 Str. 8

You have been referred to the way in which the French Court of Admiralty, had proceeded in the case of the Vrouw Anna Catharina, which was condemned as a French property, upon the ground of the French Ordinance. In that case a vessel which was really American was condemned in a French court of admiralty, because the ladies role d'equipage on board which had been produced as evidence in a treaty between France and America. Now the American owners, the crew, and other documents which are produced as evidence against the property, is not conclusive, but only primâ facie evidence that the property is neutral. But towards the owners offered to prove absolutely in the court, that the property was bona fide American. Upon that they were bound to prove the French ordinance, as a matter of law, and it appeared to be inequitable. It seems to me that it would have been better to have decided that the ordinance influence which could not be made of no consequence.

The Practice of condemning neutral property as the adjudication of a competent court, and recognized in the courts of all civilized nations, ~~and~~ cannot not be considered a sufficient evidence, and will not be admitted in the case. Otherwise, however, where the condemnation proceeded on the ground of a liquid claim with an additional confiscation without adjudication, it is considered as a decision between the neutral and the belligerent.

Case 1 Rob. 340

The facts recited in a judgment of a French court of Prize, in the point adjudged.

Obligations of Neutrality.

Resistance to the violation of search for contraband goods, if condemnation ensued, amounted to a forfeiture of neutrality.

There must be a violent resistance to search neutral vessels, or the prohibition to deliver contraband goods would be an idle form.

Contraband goods in neutral ships in time of war, or in other words, shall free ships make free goods? The Court cannot sustain the condemnation.

Vehicle.

The first claim is founded on the violation of the neutral territory by the enemy's cruisers, and in Delaware and Virginia, and in Florida, and in the neighboring bays of the

is expressly laid down that the settlers
and have the world.

Burlamaqui and Rutherford both have
known the same doctrine. No opinion was
then entertained to the contrary. Vattel
speaks of it as the settled law of nations.
Vattel. lib. 3. c. 7. § 116.
Vattel was a native of the same country.
Bynk. 450 In 1557. in France, there was a decree in
these words that the ship as well as the goods
should be forfeited. This remained in force
almost a century, when it was altered and
the common law Mareschaussee restored. This
continued until 1681. when the old Roman
rule of condemnation was revived. In 1744
this ordinance was repealed & the true rule
again adopted.

In the treaty made between this Country &
Holland in 1782. this right is expressly re-
cognized, with a proviso that there should
be no search if an armed ship was in com-
pany with the merchant ship.

i.e. that the same rule that exempts in case
of neutral ships an enemy, was adopted
then appears to be an act of the States
of Zeeland 1664 in which they recognize
the principle on the law of nations.

Bynk. 455. There is a good article in Bynkershoek on
[illegible]

[illegible]

[illegible] was regarded by a [illegible] [illegible] [illegible]

determined to remain it. For this purpose was formed the armed neutrality by those nations in 1780 to resist the English relaxed in their practice and were willing the principle. And on their afterwards receiving it a second armed neutrality was formed which was afterwards crushed in a manner which it is unnecessary to state.

It seems then that if a vessel warranted neutral and enemies property on board the owners withdrawn, or if the vessel was engaged in carrying even neutral property to a blockaded port, or contraband goods, judge Story stated in Ship Ca. 1) the is liable to capture and the incorrectness is avoided. When the ship is taken and carried into a port for the determination for condemnation. The conduct of the captured is considered as a have already observed, presumptive evidence of the bad character, & is treated.

But if the condemnation is founded on some evidence of a foreign nature and recognized by the law of nations, it will be no evidence of a second offence.

The upward argument to be proposed with all the proofs of neutrality, and be required

in the treaty between the nations.

The question as now stated is, Had the owners of a belligerent have a right to search the unarmed ship, which belongs to the national owners of a neutral? A neutral unarmed ship has a right to resist and if she does, she violates the warranty of neutrality and is liable to condemnation.

I will now mention the law on this subject relative to the sailing of the vessel with and the proper papers. I apprehend there is no disagreement in the counsel on this point. The neutrality is in the ship's papers, but it does not follow that the belligerent has a right to condemn. He has not without further proof. But still the owners have put to greater hazard by the unsafe and illegal discharged from liability. But if the top sails from not being provided with document required in case of settlement and not received by treaty the owners would not be discharged.

A passport is one of the papers which are expected to be found. Another is the sea letter which is a specification of the cargo ownership of the vessel. The next is the muster roll of seamen or sole deposition. The last of

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lading also purport an invoice of the cargo found on board. are expected to be found on board a neutral vessel. If these papers are wanting on any of them, it warrants a detention in the belligerent. But after all if it can be proved to be neutral property the cargo is condemned. But on the other hand, the owner could not recover of the captors his costs and damages, for the detention was occasioned in his own default. Nor can the assured impose this expence upon the insurer.

The vessel must be navigated in conformity with the treaties between the neutral and the belligerent and if not, a foreign passport will warrant a detention.

7 T.R. 95

In the treaty between America and France it was provided that the flags of whatever nation was neutral should always have on board passports from the neutral government. An American ship sailed from London to Surinam and from thence to the coast of Africa. There she sailed, by Surinam the bad no passport. At Africa there were one, and in a fortnight captured by a French privateer on the coast of Africa with her passport on board and was

seemed the same as a warranty to the owner, it was holden that the warranty was that the vessel should sail with such papers as would protect her, and though the capture and condemnation were not owing to the want of a passport, yet it was holden to be a condition precedent and that no liability attached on the part of the insurers.

A French ordinance is part of the law of nations that every neutral should be liable to capture if her supercargo was an enemy. A Portuguese ship sailed under such circumstances and was captured and condemned. Was the insurer liable? Yes. For there was no treaty between Portugal and France making or allowing the regulation prescribed by the French ordinance. Had there been the insurer would have been discharged. But one nation is not bound to know the arbitrary ordinances of another. Park 366.

By the treaty of Utrecht it was agreed between England and France that a certain document should be carried on board the ships of each. Ship and cargo were insured which had not this document Park 358

Freemance

on board and the insurance was holden to be discharged. In the course of the argument some expressions are reported to have dropped from Ld Mansfield, intimating that the decision was grounded on the ordinance of neutrality. Had there must be some inaccuracy in the Report.

The doctrine then is this, a breach of the law of nations or of any alteration by treaty of the law of nations forfeits the warranty of neutrality. But a breach of the municipal ordinances of a particular nation, would not discharge the insurer. A ship was warranted neutral, captured by the French and condemned as prize. However her Pass was a Portuguese and the sentence was holden not to be evidence of a forfeiture of her neutrality. Decisions where have been pronounced for a breach of the French Rochel & Bordeaux orders in Council have not been holden to have forfeited their neutrality as to British or Dutch insurers.

8 T.R. 243 Lum. cases explained

Representation

A representation which is not incorporated in the policy suffices from an warranty. Representations must be material. It must be proved. It is not enough that there be misrepresentation of facts & material

Where there has been a [illegible] [illegible] Rev. 19.
really found the witness in red blood. Rev. 19.
It is said arise from a faithful
to comply with the terms which appear
they are represented to be accurate and
is not so in fact, yet he is bound the witness
will not be liable.

There are two cases on the back of this Rev. 18.
point which seem not to be reconciled
but the intuitive and distinct with some
reason. In the case in Cowper the witness did
not aver the fact claimed to have been represented
till such said that it delivered it to be true
that it was said the witness should not have held
the same in right or the assured to be a hidden risk.

Upon the principles of the [illegible] Weyl
[illegible] Rayner
[illegible] Potter
[illegible] the witness would to have been
[illegible] The [illegible] the [illegible]
[illegible] to be [illegible] that the ship was
[illegible] particular time and the representation
[illegible] complied with. The [illegible] should
[illegible] the witness

A representation need not be attended
complied with like a warranty. It [illegible]
[illegible] in a strict and substantial sense.

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185 Thus a loss it was represented that the ship was

Burg. 785 ship of force carrying 6 guns & 20 men and a capital

when she actually sailed had only 6 men and 1 boy and had

of pounds — 7 mounted 3 and 4 6 swivels this representation was not

to be substantially complied with.

Every thing is representation which is not

intended in the face of the policy.

A person who wished to procure insurance

made a false representation to the first Insurer

Dampf. Barber Fletcher and made none and all to the

others. It was holden that the falsity of

Burg. 786 the representation to the first insurer

should inure to the benefit of the others.

For they were all invited to subscribe upon

seeing the name of the first on the policy.

It was represented to the insurer that

Daugh. McDowell Brown the vessel was safe in the Delaware on the

17th December whereas in fact the vessel was

lost on the 9th. There was no Fraud but the

insurer was disclaimed. It makes no dif-

ference whether the misrepresentation was

intentional or fraudulent or not. Still if it be such

a material point and not complied with the

Park. 12. underwriter will not be holden liable.

To show the insurer, but a letter in the post office, resolved to

the insurer, and stated the fact as they were at the time, but

before the letter was received she was lost. The insur. was discharged.

Suppose the representation, neither from the

policy nor otherwise in the insurer's hands?

[illegible] of the representation, make the
[illegible] expensive than the [illegible]
[illegible]. It was [illegible] from a friend
to [illegible] [illegible] [illegible] and [illegible]
the representation was [illegible] it was an [illegible] Bore
[illegible] intended that the [illegible] should go to [illegible]
[illegible], [illegible] and not to [illegible] [illegible] and [illegible]
[illegible] [illegible]. It was [illegible] that
the [illegible] of the [illegible] was [illegible]
[illegible] and not [illegible] by the representation.

A ship was [illegible] from London to
Nantes [illegible] but was [illegible] and to
[illegible]. Liberty was [illegible] in the [illegible] Portrait
[illegible] and [illegible]. But [illegible] 193
to [illegible], and [illegible] for Nantes,
was captured. The [illegible] that there
were little [illegible] the [illegible] of an
[illegible] of trade [illegible] clear out, as [illegible] [illegible]
[illegible] [illegible] [illegible], in France,
which [illegible] [illegible] good [illegible] [illegible] [illegible]
[illegible] representation, but a [illegible]
[illegible] of a [illegible] which [illegible] [illegible]
[illegible] to be [illegible] well [illegible] the [illegible] 2 Str. 33
[illegible] the [illegible] [illegible] [illegible]. As if
the [illegible] [illegible] of [illegible] [illegible]
[illegible] of [illegible].

Park 187. He answered in a case in Park, represented to the underwriter that the vessel would sail on the 24th. She sailed January the 28 and the insurer was discharged, thinks the representation was substantially complied with

(He answered represented that his vessel had
P. 181 not been heard of for some time, and that on a certain year she was on the coast of Africa; but the same letter which came to his intelligence that she was on the coast informed him that he could not that year, and this fact he concealed and the underwriter was discharged.

To view a policy of the insurance of a ship at sea
Park 210. informed his clerk that certain news from the West had been taken and asked him to insure; the clerk did insure but did not inform the underwriter of this fact and the court held that he was discharged by the fraud of the agent.

An agent of his had received a letter from his correspondent at Lisbon, ~~[illegible]~~ him that his ship was ready to sail soon
Ins. P. 373. after another ship which sailed with her arrived. This created an alarm and the agent procured insurance without informing the underwriter of the arrival of the

other Ship and he left the seaman and the insurer.

In the case of Shirley v. Williams in Hardwicke's R. this was a concealment by the master of a circumstance which the court should not allow, though the broker did not so that there was no intention of fraud: but the insurers were misled.

Doubtful rumors are not to be insured. The assured had heard a report that his ship was taken, and procured a policy without acquainting it and on a ship sailing from some other place, the insurer was holden misled though the report was false.

Even a non-compliance with an ordinance or a breach of the regulations, ought to be disclosed, if known to the assured.

So if the insurer, on the other hand, is guilty of any fraud or concealment, as if he has seen an account of the arrival of the ship, and then insures, the court will not allow him to retain the premium.

There are certain things which are so notorious and of such a nature, that some facts which are equally supposed to be within the knowledge of both. These matters of opinion or speculation must never be insisted on to the insurer, as the prospect of war or any other political event which be

Shirley v. Williams

C. P. Wms. 171

Str. 1183

Indemnity

suppose many losses in future. But if more
have actually been occasioned or even if there is
a reason to apprehend a recurrence, I would be
afraid upon the insurer and to avoid
Lumsden v. Cox 1899. 2 Q.B. 544. the insurer is supposed to be acquainted with
the circumstances of the case, would certainly be
sufficient to indemnify.

There are cases in which facts need not be disclosed. Where a prudent person is to be fitted with an
Rud. 229 intended enterprise need be communicated.
And the insurer knowing these facts is
left his premium accordingly.

There is no obligation on the assured to disclose to the insurer a principal evidence, when he
Ch. 194. Bar. 1905 is ignorant of it, though it be otherwise
and the insurer is ignorant of it. Should
be communicated to him, or his obligation will
be discharged.

Implied Warranties.

There are certain implied warranties on
the insured to be observed or else must be com-
plied with, or the insurer is not liable.

1. That the ship shall be seaworthy, strong,
and able to resist the ordinary perils of the
sea, such as are incident, serious enough
be willing to stand at sea.

The undertaking of the insurer is merely against
unforeseen and unexpected losses. If the ship
is not seaworthy, the risk is to be avoided.

Even if there was a concealed defect unknown to the insurer: and the time of sailing, the insurer would still be discharged. And the Court thought even a concealed defect in the hull would have made no difference.

If a ship is hired without an accident, and happens an extraordinary peril, the navigation is said to be not seaworthy, and the owner of the vessel is bound to have the vessel seaworthy. If a ship is hired in a country where she was not seaworthy, the insurer would be liable; and in that case the party is termed an insurer.

Insurance on insurance of the object is no crime, for and consisting with the warranty. On a case in Maryland, it was agreed that the vessel was not seaworthy, but the defect was unknown to the assured and the time and the insurer was discharged, and it was also decided and to be a right approved by insurance. Would be discharge the insurer the ship must have been unseaworthy at the time of the insurance. Subsequent risks are insured but the underwriter.

A ship wrecked when one should not be employed to be one of the best ships in the fleet failed a few hours after, without any extraordinary

Marsh. 368-9.

Park 921.

Phillips 2.104.

Seaworthiness

1802 and if an order to be strictly observed the evidence
had been considered.

A ship must not only be strong, but she
must be properly manned, and prepared for
navigation at the time of sailing. And if
Feb. 10 the ship is sent to sea in unknown parts or
perhaps come to a port with which the ma-
riners are unacquainted and fails to employ a pilot, or
if the master is a man of notorious ill-
conduct the underwriter will be discharged.

The ship should be properly equipped with pro-
visions for the usual length of the voyage.

2. Another implied warranty is that the ship
shall not be engaged unlawfully from insurgents.
Then goods may be removed from one ship to
another, and the insurer will still be liable.
The question then is, has the master acted prudently
for the benefit of all concerned.

On a voyage to Dominica the ship was wrecked;
part of the cargo saved, being saved, it was
Feb. 10 brought to a good market, and sold, and
the proceeds invested in other goods which were
put on board another ship, and the voyage con-
tinued. It was holden that the master had
acted discreetly, and that the insurer was still
liable.

There is always a discretion left with the trusty
insurer of insurgents to employ another ship.

and all necessary expences incurred by the insured in either case must be allowed by the insurer. Hence it will be perceived that the insurer may lose more than the value, as if after the accruing of these expences the whole of the property is lost. This principle was illustrated in a case reported in Doctor & Student in Error.

Sir Day.

1 Term 432. 681. 576.

But the rule of insuring an ascertaining is modified when ships are insured abroad when it is uncertain what dangers will be employed. Numberless embarrassing questions have arisen and of course of this nature. A having goods in Russia insured them on a barbarian ship and a large sum on a other ship or ships as would fall within a limitation. The underwriters to the 2d policy are not informed of the first. Goods to the amount of the 1st policy are shipped on board the specified ship, which arrives. goods to the amount of the 2d are shipped on board another ship which sails and is lost. The insurrection of the second policy are unknown, for the assured had a right to apply the policy to whatever ship he pleased.

2 B. M. 1245 and note.

3. Another implied warranty is that the ship shall be navigated in conformity with the laws of the country and it neither with other nations.

A ship sailed from Marblehead bound to Africa and was captured by a French privateer and condemned. The was not warranted to the neutral, but the assured expressly replied to the contrary. The was condemned as an enemy property.

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The insurer could not depend in an action against him, on the ground that she was not carrying neutral property, for that was a risk assumed. But the ground of defence was that she was not supplied with a muster roll according to the treaty between France and America.

8 Feb. 92. The prize court before which the question and idea was decided in the U.S. it appears that foreign judgments are respected as conclusive on the point adjudged, and they are not so as to the grounds which led to the conclusion on which that judgment was predicated. If the French Vice Admiralty has condemned the ship because she had not a muster roll on board, that judgment would have been conclusive as to the fact, but if she was condemned for having enemies property, the judgment is not conclusive as to the fact which induced that in France. The French court did not decide this point, that the ship had on board no muster roll, but only rested it on a fact.

Marsh. 394.

4th Shall not deviate.

4. There is likewise an implied warranty that the ship shall not deviate, that is, shall not pursue her course unnecessarily. In this case the undertaking is accomplished. This is not on the proviso that the risk is increased: that may not be the case. But the warranty

must be strictly complied with.

If the ship does not go on the usual course, and if she goes on the usual course in that trade, the warranty is strictly complied with, so that the insurer will be liable for a loss. 1 Bur. 343

But where the chosen course is a dangerous one, it may be questionable whether the law is right to go that way. If the shipowner put a new course where the old is known and not accustomed, it is not a deviation. But to this point there has been no decision, but it is the safer way always to pursue the old course.

It is no deviation to visit those places where it is customary to touch in that voyage though the place is out of the usual course. But a few instances of the touching of vessels at a frequented place will not warrant a departure from that purpose. It must be the usual course of ships in that voyage. Burrill 44.

A vessel from Cadiz touched at the Isle of Wacem and on its being proved not to be the usual course of the voyage, the insurer was holden to be discharged. Coop. 681.

The object of the deviation is not to be avoided by the law of foreign, but from the time of the deviation. 1 Pick. 340. 1 Pick. 440

The underwriter is discharged. For loss which happened prior to that however he is nevertheless liable.

It has been contended that if a vessel has

1 Bow. 55

improvidently restored herself to her course and with the deviation is cured. But though this was formerly a question it is now well settled, that the law is the contrary.

Any intentional deviation however small will discharge the underwriter.

The policy may and often does give liberty to touch and to pass touch. But if such permission is not given, and the port is not one which it is usual to visit, to touch there would be a deviation.

But there may be several ports of

6 T.R. 531. 8 T.R. 533.

discharge. In such case you must pass them in their order. If the order is fixed in the policy, that must be followed. But if the order is not fixed they must be visited in their natural order according to the course of the voyage.

But with respect to this last case I find some difficulty in accounting for the, indeed one another ground.

The ship was not able to reach the first port in the order. So that the deviation, I think might have been considered as a deviation from necessity, which is always admitted as an excuse.

1 Bos & P. 313.

Suppose an insurance is made with liberty to touch and stay at any port in a certain place, he must pursue the course of the voyage. A ship was insured from [illegible] to London, with liberty to touch and stay at any port in England. Can she pass by of her port of destination? No. she can only touch at ports in the course of her voyage.

Lefevre v Wilson 1 Dougl. 314.

Letters of Marque are often insured. These have no regular course, unless that is provided for in the policy. Seamen are not insured for expense. They have no right to demand an guard officer, unless in their regular course they fall in with an enemy and then they may demand lux where a letter of Marque drove away an enemy, and lost her prize, and need no money accrued from her course in hopes of meeting with her, this was taken to diminish the insurance.

Bergeron 8 T.R.

Where an insurance is made for a certain time & has been exceeded, the insurance ceases the

whole time and make send cost and expense & times.

Park 381 There is certain courses and distances, which are made according to the course of particular courses and the vessel sailing on the round course than the usual time, though she has not deviated, the insurance will be avoided.

A deviation is not sufficient to avoid to appearance. It does not increase the risk.

With respect to an intention to deviate, and a ship before the ship arrives at the dividing point it has been determined that such intention does not constitute an actual deviation so as to discharge the underwriter. But if on the day so intended the business and journey is approached from that direction, though the ship happens to be before the vessel arrives at the dividing point it will be considered to be a deviation. In round voyages the vessel itself is not chosen and the insurer must be liable until this has been actual deviation.

A deviation which eliminates in most life insurance dividing the insurer. The ship is bound in such cases to act according to her science, for the benefit of all who are concerned. If a vessel is driven by force of the from her course she is not applied in such case to recover of the ground from

Park 377

which she was driven, and may accordingly pursue her voyage from her present situation.

Where a vessel wants repairs, and puts into port for that purpose, it is a reasonable [1 Dall. 54.]
and ship-master go aside of her course to avoid a contrary, or to avoid an enemy. All these [Park, 231] [2. Pet. 443.]
are cases of necessity which are to be governed by prudence and discretion of the master.

Where the crew mutiny and compel the master to discontinue his voyage and put back, it has been holden to be a matter of necessity which excused the deviation. Though a doubt whether it accords with the usual commencement. [Stev. 260]

Loaded insured against.

It will be well to keep in mind in consider ing the various topics, the particular one we are considering as the only one insured against.

By a total loss in the common sense, is meant not only an entire destruction of the property, but such a loss as renders the voyage not worth pursuing; as when the property remaining will not pay the freight. But the assured in such case must abandon to the insurers all that can be saved. During an engagement a privateer was turned from her port, and on the delivery of her written [illegible] assured abandoned and afterwards found and that she had taken certain [illegible] and that the insurers availed themselves of

Insurance

Perils of the sea. The perils of the sea are
recent such perils as arise from the
of weather, winds and waves, storms, tempests, lightning
shipwreck, fire, collision

It may happen that some of these causes
may be the sole proximate cause of the loss and
yet not be considered as the immediate cause
so as to subject the insurer. As if a vessel insured against perils of the sea is wrecked
of her course by a storm and then capsized
the loss must be attributed to the immediate cause and not to the remote one.
If part of a cargo is thrown overboard in a
storm to save the rest, this is a loss by perils of
the sea. If ship was lost in consequence of their
carrying with them and it was determined not
to be a loss by perils of the sea.

Suppose the insurance, on one whose vessel
are lost in the course, inquiries then
the men are then are said insured against that
if they are lost in a storm the insurer is liable. Whether the loss happens from ordinary
and common occurrences or from extraordinary perils is the question?

2. Insurance against perils of the sea
and also against damage done by another vessel. If the insurer proves the more

misconduct of the master and mariners, it is not insured against.

3. Insurance against fire. The same rule holds here as in the last case.

A ship coming from up the Levant is hired to touch at Marseilles. The people of the island being alarmed at a report of an approaching confederation are heard leaving the island; and the insurer was holden liable. In another case similarly circumstanced, with the additional fact, that the Captain had misrepresented the situation of his crew so as to procure admission into the port of Marseilles, where he communicated the disease, the insurers were not holden liable for the burning of his vessel. Both the ship assisted in the misconduct of the master which was a risk the underwriters did not assume.

4. Loss by Capture. There is a distinction between capture and destruction by foreign. When the object is to make a prize of the ship, it is always a capture. But if the ship is merely destroyed, for the purpose of annoyance, it is rather under the denomination of destruction, or loss.

Whether the capture is brought or contemplated

is never the object of enquiry. A capture by pirates is never subject to the insurer as a capture by an enemy.

This capture is sometimes a total and sometimes a partial loss. The insured may always when they hear of the capture abandon and recover as for a total loss. But if the ship is recaptured before abandonment it may be either a total or a partial loss according to the circumstances. If by the capture the voyage was broken up it will be a total loss notwithstanding the recapture.

17 B. & P. 103. If the ship has been recovered, it is a partial loss for which the insurer is liable if there are any expenses of salvage to be there must be deducted by the insurer.

Capture is a total loss of itself, however nothing in between before abandonment whether abandoned or not. But if the ship is recaptured or recovered before abandonment then the enquiry is, was the voyage frustrated by the capture? If it was the assured may still abandon and recover for a total loss.

10. East. 74. Dor. 6 95. The recapture of a ship which has been condemned does not signify in law.

This is not a sudden danger and it would be hard to the insurer and encourage a bit-

patron in force are done.

Case never has been any question as to the validity of Captures made in the battle — 3 Rob. 1794
Modern decisions have disallowed a reasonable claim for the war certainly

Of the Detention of Ships, Crews and Goods. In such cases the inquiry is doubtable, whether the detention was legal or not. For every arbitrary act of force, accompanied with bad intent for its object the capture of the vessel, the indemnity is bound to indemnify the injured. Mass.

The island of Corfu formerly belonged to Venice, and was in a state of anarchy. Venice and Venice were then at peace. The Sanctuaire seized upon a Genoese ship, and bound for it to supply the wants of the people. The question before the Genoese Court was, whether it was a capture or a detention, and it was decided to be a detention. And the principle assumed was that where the object was not piracy, it was no capture.

Suppose a ship is not manifestly adjudged to be, and is arrested on that account. This is a detention for which the owners are not liable. If it was for

2 Vern. 176. restraining & impositions. This indeed might be insured against under the head of Barratry.

There has been a question as to what is meant by a detention by people.
A ship in a time of scarcity, was driven with a load of corn on the coast of Ireland, and boarded by the inhabitants who took out the provisions &c. The Ct held that the insurers against detention were not liable. For this was pillage and not by order of the government but by a mob.

1 Atk. 444
2 Str. 640 But whenever the detention is by order of the government whether legal or illegal the insurer is liable.

May the insured abandon for a detention? If the voyage is frustrated by
Burr. 583. the detention they may — but if the detention is for a few days only and the voyage is not frustrated, they can recover only for a partial loss.

In all treaties there is a clause that all
2. Burr. 1217 subsequent captures shall be restored. These are considered as detentions for which the insurer is liable.

Loss by Barratry. The law on this subject seems to have always been [illegible] the two cases appear to be the [illegible]

Piracy is an offence at sea. It is
an indictable offence of the quarter and common law,
— people concerned in the offence plead their clergy.
This originated probably in insurance on
property shipped by the offender on board a 1 Str. 581.
chartered vessel. 2 Str. 1149.
13 R. 301

Piracy some without authority conducted
or found committed against the owner
or running away with the Ship, or
the taking the property of the owner of the Ship,
or after owner against barratry on the
owner of the goods.

No negligence or unskilfulness is barratry
we are told. Though the owner of the
Ship might be liable to the owner of goods.

A vessel sailed from Cuxhaven for Jamaica. 7 T.R. 505
but the master kept back the papers and
[illegible] her crew. Instead of proceeding
on her voyage to Jamaica, she sailed for
a foreign port, and remained there. The own-
er of the vessel then had entire security
for his ship, freight and he was seized
and holden until the barratry

When by the mutiny or disobedience of
the seamen the ship is compelled to alter
her course it is not barratry in the master. Bro. 1264
Further over, no occupier certain in either of
the cases

If the master is guilty of any breach of trust though there is no intention to injure the owners it is barratry. Thus if a Captn contrary to the instructions of his owners cruise for & take a prize, & his vessel is afterwards lost in consequence it is barratry, though the capture was intended for the benefit of his owners, as well as himself.

6 T.R. 339.

In that case the Captn had accordingly come a cruising for prizes, & had received with an American ship & plundered her, by which the owners were subjected and are obliged to answer damages to the barratry.

Suppose the owner of a Ship should direct a voyage to be done, and the Captn in performing it, this is not barratry.

2 Pr. 170
1 T.R. 323

If the owner of a Ship is master, he can not commit barratry against himself.

But if the Ship is chartered, the Charterer becomes owner pro hac vice.

Burr. 149.
4 T.R. 33.

A ship was laid by the composition of the Captn & crew, which was a breach of trust & barratry. And the difficulty arose here. The insurance in the policy was limited to coastwise trade. But the Ship had run beside, and understood the insurance to be not only assured coastwise upon a coastwise trade, but against barratry also. Thus putting them upon the footing of two distinct policies

3 T.R. 279

The master commits barratry. The ship arrives and is seized for bad news and after P.R. 252.
the expiration of the time limited in the law. Are the underwriters liable? No. The loss is the consequence of the time limited in the policy as the insurers will not be liable. This is an understand.

But the owner may nevertheless recover upon the whole the owners are injured in damages in the nature of trust, is barratry. If you have noticed the resume that if the owners had been present they would not have decided the ship to be done, though the master may contend in this in way I think it is not barratry.

A ship was insured as a neutral and was taken by a British cruiser for having enemies property on board. Neutral in fact she had not. The master and crew rescued her and in proceeding on their voyage they were captured again, and condemned, not for taking enemies property on board but because she had violated the right of search. The insurance was made on their policy which commenced later by barratry, and the ship found had that was barratry, though on

undoubtedly Mr. Capt. supposed that he was doing an act for the benefit of the owners. I did not think with the C.J. that it should be considered as a barratry.

4 Day. I would think there was any breach of trust on the part of the Capt. and there is no reason for thinking otherwise, except the technical one that you can not presume the owners would consent to an act which the law prohibited.

Lord by General Average, means any loss which is sustained by throwing overboard part of the cargo for the general safety of the rest. The question is, was the jettison made for the purpose of saving the ship and cargo? If it was the recovery is held. For such losses all the owners of goods must bear their proportion. So suppose a part of the cargo is given as a compensation to pilots for conducting the ship into port — as if part is given as a reward to any seamen of the kind was proportionate among all the owners and for the average loss of the insured the underwriter is liable. Petty average is not insured against in ordinary policies — but it may be.

2. 1. 53.
Ins. 1. 8.

It is said that this loss must be made by a contribution of the owners. But there is often little or no time for this.

Moor. Bud 247.

It must be a loss for the destruction of the whole property, to make this insurer liable for a general average.

Where arrives in port, and some of the goods were landed, either to the ship and the rest of the cargo was captured, all those whose goods were landed contribute to make up their proportion. But unless the loss of the ship was the consequence of carrying the goods which were landed, which clearly is not here the case. The salvage of these was not the cause of the taking of the rest, nor was the taking of those the cause of the salvage of these.

Suppose goods are put on board a lighter to enable the ship to pass over a bar. The ship is saved, but the lighter is lost. Then must be a general average. But on the other hand if the ship is lost, and the goods in the lighter be saved, this shall not contribute, because in the 1st case the removal of goods was for the benefit of the whole, but in the last the salvage of the lighter did not save the loss of the ship.

[illegible] and [illegible] is [illegible] and [illegible] is [illegible] [illegible] [illegible] is [illegible] liable as for general average for all

2 F.R. 407
Hands
150

[illegible] before [illegible] for the destruction? It seems
that he will, though this point has not been ex-
pressly decided. The principle however has ad-
various decisions here accord. & by the English
judges. See a very good case in 2 F.R. 407.

[illegible]

good case
16 and 220

[illegible]

[illegible]

[illegible]

Opinion of Judge [illegible] [illegible] [illegible]

Abandonment.

The assured have a right to abandon in all cases where according to the construction of the mercantile law there is a total loss.

When by capture or otherwise the voyage is lost to the owners, though the cargo may not be destroyed the assured may abandon. So if the voyage is not lost, yet if the demurrage, expenses and charges so eat that whatever is saved is of less value than the freight, this may be a total loss.

Perhaps there is no freight, so that there can be no standard of comparison, yet if the salvage is very high, the assured under the order of the Court may abandon.

Where repairs become necessary and great expenses are likely to become necessary, and the assured give notice to the insurer to pay the expences &c. and he refuses they may abandon. But if the insurer consents to repay the expenses they cannot then abandon.

These are the general cases in which the assured may abandon but there are nearly the same principle.

15.1.54

When a ship is captured the assured

an act abandoned before knowledge of the recapture, but if they receive notice of the recapture they can then only abandon when the voyage is lost

2. Bur. 696.

So for of the 3d. 4th. 5th. it is established, that

1 K. 704

3. Atk. 91.

2 Bur. 683.

But the rule is in regard of the fourth action of the navigation, that an abandonment made in consequence of the arrest of princes

2. Bur. 1198.

1. Bl. 270.

on the Capture is the opinion both of the court and of the insurers. The ship insured was captured, 20th and retaken on 28th March. and on 6th May was captured in a hostile manner and on 29th May was recaptured and conducted Plymouth where she arrived on the 6th June. The ship and Boat were on the 23d June and upon delivered to the ground the insurer with his interest to a boundary which he did on the 26th. The insurer offered to pay a total loss but refused to accept the abandonment and the 1st decided that the insured had a right to abandon

2 Bur. 683.

If the best judge that the voyage could be pursued with advantage, after recapture &c. The insurer is afforded an hand to his act

Dup. Miller v. Ins. Co. 1. Esp. 27.

18 p. 237. Which was confirmed and the Ex. Ct. condemned
in lieu the owner, and restored the cargo. He
received it as a wreck, & the Captain, tho'
in truth it was no wreck, acted in that case, he
would not allow an abandonment? the top is
partial mercy.

There is also a case of abandonment in
case of ship wreck, even though the cargo may
be saved, for the voyage is frustrated. But the Ad-
1 P. R. 187. miralty Court have to convert the property in
Park 16. matter of ship, and then we cost the expenses exceed
Park 59. the top is partial mercy.

In the case called from Park the voyage was
lost and it was considered to be a total loss of
2 Th. 1865 ship, freight and cargo, though even little ad-
ditional loss was sustained.

This abandonment was made within a rea-
sonable time. The assured could not justly to wait
for some event, which was altered their opinion
& where when the Ex. Ct. and the Prosecutor
Park 172 the assured directed the vessel to be sent to them, & con-
8 P. R. 210. tended that they could not refuse an abandon.

If the insurers prevent the abandonment, which
would have been made, it shall be treated as a total loss.
Where the insurer told the assured that he would
2 P. R. 467 not interfere with no avail on his return of
Feb 3, he 27 allowed the assured to abandon.

When ships have been gone an unreasonable time, the insured may abandon. If after abandonment the ship returns the insurers are entitled to it. The insurer cannot insist on the insured taking the ship & cargo and repaying the money. If there were a loss the insurers have received back their money. If a stranger meet & have rescued the property in this way on the return of the ship, suppose the insurance is on ship & cargo. Here you can't abandon one and keep the other: tho' this may be done if the policies are distinct, i.e. 6000$ on 8000, and 4000$ on the ship &c. If the goods are insured generally, all must be abandoned or none. Secus, if the articles are separately insured. The freight must not be abandoned with ship & cargo. If 6000$ are insured, & the property is worth 8000$, on abandonment of the insurer do not abandon his own property. The insurers on him stand in common with him.

Adjustment of the Loss.

If the loss is a total loss and the policy is a valued one the amount is the total by amount. If the loss is a partial one here are a valued policy & the same bargains are open as.

If the ship lost is capable of an estimated valuation then the value of it must be recovered of the insurers; as if 10 tons of goods are lost & a cargo are totally lost. But if a whole cargo is partially damaged, there seem to be no particular standard by which the amount can be ascertained, except the comparison of the value of the insured as with the original cost of the whole.

The comparison is always to be made from the prime cost so that the insurer means

Emerig. 197.

1 Boyd. 72. 3 Pick. 107. 2 Bos. Marshall. Ins. 2d ed.

2 Bos. 470

not be liable for the difference arising from the obstruction of the proper market, and the expences of sending the goods into that country. The ship is valued as she was at the time of sailing.

Marsh. 55. 591.

2. Burr. 1167.

In computing the average loss occasioned by a partial sea damage, the difference between the respective gross proceeds of the damaged goods and of the sound, if they had arrived sound at the port of delivery must first be ascertained. Then whatever adjusted loss of the gross proceeds of the damaged commodity, at the port of delivery such difference constitutes the sum adjusted for the prime cost will be the sum for which the underwriter will be liable. E.g. a loss of goods is incurred from 6. to 10 P.C. the prime cost is 30£, being the total value the sea damage the gross proceeds amount to 40£ whereas otherwise, had no loss amounted to 50£ the difference is 10£ or 1/5th of 50£. The underwriter then will be liable for 1/5th of 30£ the prime cost for 6£ in complete sum: As gross proceeds of sound: gross proceeds of damaged: prime cost: to a number, the diff. between the gross proceeds, prime cost, will be the sum for which the insurer is liable.

2. Burr. 1151.

3. Term. 581.

Park. 983.

There are commonly added in the policy. The common made in fore the ins were are well known and adjusted to insure the same as indeed of the insured, and if it is made known to the insured and when the insured is kept

Beaum. 518-19

an it appears the insurer, it is considered under same terms in the contrary. It is agreed on the same in trip with the

in the case before us, where if there was no consideration no recovery can be had.

Pickering
2 Esp. 489
1 Bam. 134.
274.

Return of Premium

There are cases where the premium must be returned and others in which it can be apportioned. The principle on which the insurer receives the premium is that he runs a risk, and where the risk is not run as agreed upon the premium must be returned.

There are exceptions to the rule however. In those cases where the same fraud was used all circuits (excluding the cases of illegality) as where there was a warranty which was not complied with, or that the insurer's liability never attached, the premium must be returned.

Or again if there should accidentally happen to be a total want of consideration the premium should be returned. As if goods are insured on board a vessel in which the goods were never placed, and if land carriage were put on board it would be an apportionment.

In the case of wager policies the question arises whether the premium could be recovered back again? No recovery in case of a lost goods portions have been laid against the insurer. But

But then the insurer ought to be himself bound in honor. The rule is that without the premium cannot be recovered back.

Lowe Burn raph.

But I apprehend the true reason is that it ought to be founded upon a contract which is not in contemplation of the parties. The law therefore refuses to intermeddle or have any thing to do with the matter.

It has been held doubtful that a recovery might be had if the assured was excusably ignorant of the war declared by the Dutch in the case stated. The doctrine has been laid down in subsequent cases accordingly. But the rule would probably be attended with the mischievous consequences and operate as a temptation to break the law.

Sandg. 86. So where insurances are made on a trade with the enemy, the premium cannot be recovered back on the same principle.

There are no other cases where the general rule of returning the premium does not obtain. Where there the insurance is illegal &c. and there the exception arises from principles of policy.

Thus there is a general character, which is found on the part of the assured which is so inherently vicious, the policy would be illegal. The as-

Tu. 22 P.

and to recover back the premium. The court
here on this ground did require a return of the
premium, as the round that no risk had
been run. But the rule in Europe is now
certainly otherwise. It is said that a risk has
been run. But a fraud is a crime and the
insurer would be very ill not to recover it. It is think that a broad risk has been
run. And it is certainly liable to disallowance
recovery by the assured.

2. Rom. 206
3. P. W. 170
3 Mar. 1364

Park 218.
Cambl. N.P.

There is one singular case where no return
of premium was allowed because the vessel
was condemned at the time of the insurance
on which the risk was to commence, as in
Sonnes and Parkin which came not at
the time Bell brought in for adjudication,
and was afterwards acquitted.

1 Sp. 1554

There may in certain cases be an apportionment of the premium. This does not happen
in every case when the whole risk has not been
run. The general rule is that of the risk has
commenced there shall be no return. Sewell Ins. 668
here observe that in three cases when the pre
mium is restored it makes no difference
as to what was the reason of the risk's not
being run.

Ship sails on a voyage and an hour

Davy v. Bevan & Woodbridge

after the return and abandonment the insured then shall be no return of premium for the risk had commenced.

If the parties by their mutual consent cancel the risk and one part only has commenced on account, the original premium ought to be returned, but if the whole was paid for the other.

Thus if a ship is insured for a voyage from Newfoundland to Barbadoes at 10 per cent premium and from Barbados to Norfolk the return voyage at 12 per cent. Here the voyage is divided and if the ship is lost before the second and Barbados the insured shall receive back the 12 per cent premium. But it would be otherwise if the premium for the whole voyage was stated at 22 per cent in gross.

A vessel is insured from London to Jamaica with convoy or from the Downs. The ship arrives after the convoy has sailed. The Court considered it as one risk from the Downs for which the insurer may be entitled to return part of the premium and from the Downs to London another which having been run does not entitle the insurer to hold the premium.

So when a ship is insured "at and from" and the ship has never sailed within the limits

3 Burr. 1295 & 1 B & P. 172.

time, it was also ordered that the insurers on any ship to retain a part of the premium for the risk which they and restore the rest — and an express warrant being found that the insurers were accountable to return the premium on a stranding, per act it was so determined.

March 568
March 570
2 Park 390
Comyn 666.
1 B & P. 172.

A ship was insured aground from Hull to Genoa to depart from the Q with convoy — the said from H. to Portsmouth (there departed with convoy, which not being observed for G. the attempt left and was captured. The warranty not having been complied with the assured recovered for the whole premium, and though, if the ship had been lost on the voyage to P. the insurers would have been liable, it was yet determined that unless convoy could be proved that part was to be retained in case there was a rate of premium from Hull to P. the recovery should stand for the return of the whole.

It is always stipulated in the policy itself, that the premium shall be returned on a certain contingency or if the ship sails without convoy or barratrous or mutinous crew.

Upon the policy was that it should return in a stranding, if the ship sailed with convoy

Demand and arrived. [illegible]

Order. Dam. Coll. 121 way, but afterwards separated, and arrived

had her proof of ownership, after authenticating

a bill according by seamark. it was holden

that the assured must recover back part of the

premium, and that such an arrival was within the

fair construction of the agreement. the a similar case

it was holden that the assured was entitled to a return,

though the ship had been safe arrived with express [illegible]

A ship was insured from Virginia to London

and in the event with convoy. but the

premium was to be returned if the ship

should not arrive, not for the convoy but

for delivery where a convoy was provided the

Eldridge 1 vs. Dam. 162 vessel separated from her convoy and

so did not arrive. but declared the convoy to

have arrived. the ship sailed, and the owner

Comer 162 had the best he could and endeavored to get

the premium to be returned. the underwriters

contended that the insurer was a right to determine

for himself, for his benefit, by the common

law or agreement.

Bottomry

Bottomry & Respondentia.

This is when money is loaned to the own-

er and the ship is pledged for the repay-

ment of the principal and interest

which shall be agreed on. If the ship is

lost the lender and owner are both lost

It is no matter how much it may be borrowed, this is a mere [illegible] of the second rule, that is, for the principal and interest are joined and borrowed, then is lawful if more than the ordinary rate is reserved. Hence it is that merchants and bankers interest is commonly borrowed the person of the borrower is also liable.

Cr. J. 208. 5 Rep. 70. Bagw. 418. 2 Vent. 16. 1 Sid. 154. Hob. 47. Lev. 57. 1 Vent. 216.

Merchandise differs from money in that the former is where the goods purchased are pledged and not the money. And as the goods never be exchanged by the borrower is accounted to consider the more than a permanent exchange with the power of receiving more than the legal rate of interest.

Further, there cannot be usury in the lender and borrower an ordinary sense. Hence it has been considered to be a misnomer. Suppose the money is given up after the money is borrowed, the lender commonly receives the principal and the legal interest: for the usurious interest is made [illegible] when he sets it free.

The usury respects [illegible] it is very different as will be perceived from the in

insurance. The assurers after loss have never an in case of an insurance make the lender a creditor. The insurer has no lien on the property. The lender has. The insurer is always liable to a partial loss. The lender is not liable, except for general average, for which instead of any account he pays he is liable to contribute. For he is an insurer interested on every sum in the carriage of the property.

The owner of the custom. of the opinion the ship was doubtful in near kind. as when a ship was in a foreign country and the master could only borrow by pledging his ship.

2. W. S. 458
Mollay. 2d
2. Ch. 2.

The marine interest never attaches until the risk commences.

There was a case in which a commander was entrusted into to perform the carriage but man did and the lender was not allowed to recover the marine interest.

Re Brum. 263
4. Vinc. 281.

Perils of the sea in these cases are generally the same as in insurance. If a ship is captured and recaptured, this is no discharge of the bond. The ship may be lost in certain cases and yet the lender would

Marsh. 682.

stop his money. Those are the cases in which the insurer would not be liable.

A lost by accepting, if the lender is not privy to it does not operate as a loss of his bond. For this is by the mere act of the master.

If the Ship arrived, I apprehend he would not lose his money either before the risk has begun to run.

Changing the Ship without any necessity will discharge the lender from any loss which shall happen subsequently. For it would discharge the insurer from the risk.

With respect to the lender's liability to contribute for general average upon I apprehend that can be no question that by the general business, they are liable. By the L. merch. in all countries, all questions all questions are in general decided before the Ld. of Admiralty. And in England and in America, they are tried in the Com. Law Cts, by jury.

There is a very common clause in policies that if any difference arises, they will submit it. But suppose the party will not, can this operate as a plea to the action. I do not think it would not.

1 Atk. 457.
2 Str. 889.
3 Bro. P.C. 525.

2 Burr. 1046.
1 Wils. 129

The action against the underwriters is against the parties against a corporation whose seal is affixed it would be void.

The declaration counts upon and recites the existence of the corporation, and the necessary, formality, avers that it is made according to the seal on other charter. It then recites all the express warranties and the consideration (premium) with an averment of payment. It then states the amount of the subscription, and signature of the assured.

That the ship sailed on her voyage and if warranted to sail under convoy, but that under circumstances, avers convoy, clause. He then states the loss and the unseaworthy point, and that notice was given to the underwriters and that he promised to pay which promise he has not fulfilled. Then are established forms which may always be adopted. Thompson would advise pleaders even to rely on forms, but to be acquainted with the law on the subject. If there have been adjudged cases their bearing should be, where it is stated in such more pamphlets. If the contract was made by an agent it would be no matter

If the ship is a foreign ship and the insurance from another than the owner, no matter who he is. The letter was passed in the Mass. 47 R. 189

It has been questioned whether if after a policy is made on the property of A and B, merchandise in consignment, and before a loss another is admitted into the copartnership, he should not be joined in the action, and it was decided that he only who procured the insurance might sue in the action.

2 B & P 155.

And on the same principle where one partner insures a joint interest in his own name and the ships the action himself had no other claim than as made on account of the copartnership.

2 B & P 154.

Suppose an insurance is made against a loss warranted free from average, and the vessel & cargo taken and lost by perils of the sea, the insurer is not liable, because the warranty and disconfirmed with the policy were attached to one and the same thing. It is only necessary to prove a real connection with the contract proceeded, and therefore it is proved no defence can be taken on a misinformation of the course and of the loss. In all other cases the loss must be proved.

4 T R 85

Insurance was negotiated in the African trade, and the slaves were landed in way — mutiny prevailed among the

[illegible] and the insurers against risks of the sea were holden not to be liable though if the weather had been good, unassisted by the sea it would not have miscarried in this way.

The letter was a letter to a friend & acquaint the owners of the policy that it was necessary. If on an insurance against barratry, an owner is made aware by his friend of the fraud of the captain & of sufficient evidence to charge the insurers. Gross negligence & fraud.

2 L. Ch. 1349
1 Ch. 581

When the insured has to account expressly and on par responsible to it is not necessary for them to state their particular grounds and that merely concerned the insured assured & then [illegible]. The premises may be seen in evidence on the trial.

Dalw. 304

There is one case where the policy would not be cancelled on an insurance fire insurance paid and assured to recover back the premium.

The Mr. of the adjustment nothing pleaded the general issue. He first then [illegible] whole accounts. The adjustment [illegible] under the [illegible] which will discharge the [illegible] and [illegible] was an-

[illegible] to be [illegible] [illegible] [illegible]

[illegible] [illegible] be tendered [illegible] with the
original cause.

The English rule is that the [illegible] must
bring the premium into court [illegible] a tender
has not before been made.

Oct. 3? There has been a question, as to whether
the proper mode of pleading the illegality
of the [illegible] whether it is to be taken advantage of in abatement or in bar. If we ascertain the law on this subject there can
be no difficulty &c. The contract [illegible].
The contract is [illegible] if one which was
made before the breaking out of the
war in which the right of recovery
is only suspended that must be pleaded
in abatement? But if the contract is utterly
void on account of the alienage and it is
one on which no recovery can ever be had,
it may be taken advantage of under the
general issue.

Very often there are a number of separate insurances, that is a number of subscriptions on the same policy for different amounts &c. Here it will be perceived that [illegible] there would be as many
actions as underwriters. Applications
were made to the Ct of Chancery to remedy
the inconvenience which this gave rise to

shall the underwriters would agree that if the vessel adjusted, and composition on the losses of the vessel should be paid, they will in mind all the others.

It would then have been a rule of the Court, a composition should take place with the consent of the parties, the underwriters will come to a settlement, upon composition, after considered reasonable, and will have ships crew, and will procure and the staff with all necessary, may in his favor &c. &c. &c.

Suppose afterwards an agreement the ship would begin a wreck of course, when the judgment is obtained, the Court will treat the application as a contempt of Court.

Forbearance.

It is held from in one single respect that in all cases in a merchantman from certain causes be a ground to construed as waiving such their interest.

So there also may be forbearance upon the settlement of accounts in our courts and other transactions. It has been decided, in a case where there are two underwriters and one only is sued, the other should be released from liability to a fraud in the

Ins. 283 [illegible] The contract had not entered in the
[illegible] It is true it was marked in the
petition, and that some under determined
on the principles which governed before
the rule was settled in Bond v Baker
that an interest in the second above shall
exclude a witness. If in this case a
consideration rule had been made
as in interest of [illegible] of Agnew, the decision
would have been unquestionably correct, and
not overruled with the law and the [illegible]

3 S.R. 27 [illegible] But in the present case of Bond v. Baker
it was solemnly determined on great consideration;
that if the Holder of a policy procures a policy on his life
himself after the other underwriters have subscribed it
he may be a witness for the other underwriters, if the relation, from all contribution for costs, stands
an action be depending against him, tho he has joined in a
bill in equity against them for a discovery.

Second, let us this case depends wholly upon
the construction of the policy. How does it
appear when his testimony becomes necessary
from the circumstances of the case and
be admitted.

[illegible] to be proved is the [illegible]
[illegible]. The introduction of the minutes [illegible]
is not of itself sufficient. The signature
of the clerk must be proved.

Parol evidence cannot contradict
the writing. But it may be admitted
to show, that in the usage of a particular
trade, a particular construction is to be
given to a term. As for ex. that in the trade
made under a policy on goods the bottom-
ry bonds are included. The rule requiring
proof of the authority is where it has been the usage
of the trade. So in the case of an agent
by possession may be a sufficient [illegible]
the action of trover, the jury will presume
the authority of the owner. The jury will presume
the consent of the lawful owner to a transfer
made in the usual course of business, and may be introduced
to prove it in the same manner.

Bills are frequently produced by agents
and the warrants authorised by them. If
their authority is denied it is to be proved
in the same manner as if the authorised
person was in the school. It is here
still another step to be taken if required
and that is the proof of the agent's
signature

[illegible] 15 N. 61 [illegible] [illegible] [illegible]

The inferred having received the same orders, the Dane on board, consented to warranties, which they were have been complied with.

The inferred man introduced the idea of a foreign act of Admiralty by an alleged evidence of a non compliance with the warranties of neutrality.

The Court said, some from what it some must be proved. And it must also be shewn to have happened during the continuance of the risk. 7 T.R. 158.

It must be shewn, on the interrogatories, that they were found on board. This is proved by the bills of lading.

The case is a claim for a loss by Barratry; the defence is that the master was aware, he must prove that he had the owners his on him.

It is said that the mere doubtful transaction is different from that of a common bill with respect to the reasonableness of the warranties. I doubt particular that there is any difference. Such warranties are never considered as the probable property of a cargo, which the owner was not supposed to make. The immediate

damages are well recoverable.

It appears I agree to deliver to me the Defendant has the bills offered and paid.

F.R. 81 not. If a bond is lost, it is liable? Only to the sum at which it was valued and the time expired by and interest from that time. The subsequent protestation of the merchant were unnecessary.

An insurance was made on the goods on board an Spanish vessel bound to Cuba. Some of them accidentally escaped later and were from mutiny. Part were dead – others refused to eat and died, – others drowned – others still were drowned. The jury held that the insurers were only liable for those who were dead.

Any immediate damage may be proved under the general averment. Under an open policy losses of the sea, expenses by salvage may be proved.

Place came to a crack of power in which there is 2 to be a clause in other in. Do not preclude this difference.

It is said that wages are not included

Park 82. in a policy on a ship – that is under a sea-

54. as are paid, while a ship is undergoing re-

F.R. 127. pairs from damage occasioned by a peril insured against.

Since these occurrences there have been one or two officers brought in on a court martial for neglect of duty, for a breach of provisions, commanded the fleet while the ship was building in Quebec circumstances. The provisions were used in the ship, but the officers considered them as used till they in consequence of the ship to be unable for them. Their pay would be cut off, and their families to be turned adrift, & turned out of the service in consequence of it.

Instances are proved unable for the breach of provisions to be now for the 20 months for paid charged to the navy.

The last case is a question on a court martial for a total loss, the ship was covered in frost & a great part of her masts & rigging. It was taken up to Philadelphia & the rest of the ship N.B. and in the process of a court martial the commanding officer for the work & for keeping the ship unfit for service. The court martial was the same in a general court.

Rec. 20

Rec. 96

Insurance on lives.

Vix. Edwin 1135. Marshall. 2-6

Insurances on lives are made to indemnify the family or creditor against the uncertain against the death of the person insured. Insurances upon lives in which the assured have no interest, or application would be considered void here since there is no stake.

The person whose life is insured is commonly warranted of a certain age and free from any accompanying disease. The warranties are conditions precedent the truth in material insurance.

Under a warranty of good health

Wh. 112. Marsh 659.

general cases have come up. When it was claimed that a person was troubled with a consumptive cough the physicians testified that it had no tendency to shorten life. — The insurer was holden not to be entitled. So in the case of a party of hypochondriac mind.

Who has interest in a life? A father has an interest in the life of his child. A husband in his wife. Any one has an interest sufficient to support an insurance who has a pecuniary expectancy in the life of the person insured as a creditor to be.

Insurance Cases N.Y. Vol. 102.

Dwight v. Hall

Bake R. 151.

[illegible] apprehend [illegible] in this letter
[illegible] [illegible] [illegible] [illegible]
[illegible] of the debtor [illegible] able to pay.

The loss in these insurances must always be total, from the nature of the case.

There are certain exceptions always introduced, — as fire of the person dwelling on the land of another, the insurer will not be liable.

The death must happen within the time limited.

Insurance against Fire.

See Park 497 Marsh Ins. 139.

An insurance against fire is made [illegible] 8th 1824.
common [illegible] [illegible] there is an interest [illegible]
[illegible] [illegible] been [illegible] [illegible]

It is common to insure against several offices. There is a course of proceeding in these cases but which is regarded to be an [illegible] of which the insured [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

It is common to insert [illegible] in warrantie and an [illegible]. This letter

1 Wilm. 363 Dal. not been a driver rent to do. If bonus
2 Wilm. 203 the detinue in the London Market dec
Parch. 688. not come within the exception. After the
assignment
[illegible] a [illegible], ex captain [illegible]
by civil commotions and the was [illegible]
to exclude [illegible] the Mass paid [illegible]

The insurer must have an interest not
only at the time of the insurance and at
2 Ch. R. 55. the time of the loss but there is a provision
2 Bro. P. C. 49. for transmitting it to the assignee. Other wise
it is a personal contract.

Immediate notice of the loss must be
given.

When after the expiration of one year the insur-
5 F. R. 695. 1 B. & P. 464. ance for the net is not paid within the time
6 East. 574. limited, or not tendered until after a loss
has happened the insurers will not be liable.

Charter Parties.

There are two kinds of Charter parties. One is where a merchant agrees with the owner or master of a ship to carry goods for him. This differs from freighting in that here the owners of the goods have the controul of the ship.

The other is where the Charterers find their own merchandise and only hire the ship. The former is much common in Europe; the latter in this country.

The ordinary rate of freight in the Mediterranean, which is increased or diminished according to the law of the navigation.

The freighter in this case agreed to pay a certain sum for the use of the vessel is hard before the master has fulfilled his part of the agreement, the charterer pays nothing for the use. But if she be lost after, he must pay the rate and proportion. This is one of the principles of Oleron. The loss as remote as possible. If the ship is chartered for a voyage and return, and other merchandise, and one is lost on the return, the ship owner receives nothing; though it is the merchandise separate. Quaere, as otherwise.

2 Vent. 210

Abandoned ship arrives at the port of delivery, and brings no return cargo. Shall the shipowner be entitled to the stipulated freight? The question is not standard by which to ascertain it. If the failure to bring a return cargo was occasioned by the default of the owner, the owner may be made liable for the loss, if the road actually transported cargo. But if it was owing to the other fault of the master, the rule is the same as the default of the owner. The shippers are excused.

Id. 246 If the master of a ship which is abandoned loses or injures the goods in consequence of instructions received from the owners, the owners are both bound.

Shipper or voyager is frustrated by a storm, which compels a ship to put into a port to repair. The master has a lawful right, if he will to pay some or more to have the goods to their destination, or they are not injured, or injured such in a trifling degree. But suppose they have been immediately damaged, the shipper has a right to abandon the goods to the owners of the ship and demand freight? Had it been choose, he may have a deal from

ship and in this case they must pay a reasonable proportion of wages they agreed to pay, in proportion, for the voyage. Ber. 882. 888.

Vessels are sometimes hired in this manner without any contract being made and all the law does and requires in these cases, that the contract should be sealed, or written.

But the law requires and in such cases requires that the owner in the first instance should pay the merchant, a sum of money called earnest money which is forfeited on a failure. The merchant also may and may then needs before the loading of the vessel, on paying back the earnest money and as much more. It is commonly said that he must pay double the earnest money, but this is all.

By the common law, in other cases, for a breach of such an agreement an action lie; but in the mercantile law, the rule is different.

When any injury happens, to the property of the freighter, by the misconduct of the master, he is always liable, and so for injuries arising without his default.

the vessel, or a shipwreck, or by some
common carrier.

No special contract entered into between
the master and the owners, can affect their
liability to the freighters. Whenever a con-
tract is made with the master, it subjects
the owners as much as if made with
them. In this case however the freighters
do not see where the contract is made
with the owners, look exclusively to them.
The two mentioned cases, this recorded
from the Common Pleas, is about the form
of the contract with the master when
an owner could not avoid his responsibility
himself. A communication a contract
with the returns of another, made the
principal liable and not the agent.

When the owner is hired, the freighter
applies to the master & sees the con-
tract, no liability accrues on the part
of the owners for the master misconduct
and this in all other cases applies to
the owner.

A freighted ship and crew is bailed
injured by accident. It has been argued
that the owners are not liable.

Had it happened and that of the accident
happen in port, then are liable as com

manoeuvrer. This idea originated from their being in their temporary in the body of the country. But I doubt that the influence by any means follows.

The commander of a vessel has power to contract for necessaries, in any foreign port. And no contract between the owners and the master will excuse their liability though it may make the master liable to them.

He has power for this purpose to hypothecate the ship. And to the creditor who supplies him, the master is also personally liable, as is also the owners besides the lien on their ship.

Suppose a ship owner should have his ship for 10 years, and in that period it becomes necessary for the master to furnish the ship with provisions, though the owner has no interest in the freight or voyage and has never up all owner board over the ship he is still liable. Now is this all. If the Captain was employed by him the owner would also be liable to the freighters. The mercantile law has sufficiently been in force by which when a ship is hired the hirer commands the ship, as in ordinary cases.

1 Bouv. 190 278.
1 Hall 85.
2 Bouv. 69.
2 R. 918

1 Hardy 376.
2 Bouv. 643. 643.
Comp. 186.
1 R. 73. 108.
1 Hall 6.
1 Hardy 85. 190. 376.
Com. Dig. Bouv. 2 [illegible]

Reindeer of Rockets

I shall proceed consider the rights of the subject only so far as the consideration has arisen from the Commission.

There are a number of proprietors of whom one owner more than half the moiety of the land in letters have to admitted for the direction; Upon the minority the Commissioners have to admit in joint tenancy and the owners.

All the owners should have notice of the meeting for the purpose of admitting the company.

Suppose a majority then admitted is made against the will of the minority, who are partners and a profit in the trading of a profitable concern is made the minority shall be entitled to a proportional dividend but then it has become doubtful if you therefore able to pay the expense. But the majority in the first instance can proceed this by passing a bond in a sufficient sum to pay to the minority in case of a loss which they shall be entitled to.

Suppose nothing of this need in case — the minority can not unite to set of adventure

Ex Map 286

Ex Mun 648

5 Ves. 162.

[illegible] against the capital stock; and then they are not entitled to any part of the profit. 2 Ves. 223. 1 Ves. 285. Ambl. 675.

Suppose that A & B two joint owners and A the ship without the consent of B and nothing is done on the letter to attend or certify. — If the owner is lost, B loses his share, for if a profitable voyage had been made he would have obtained in the profit. 1 Molloy 281. Park 297

In settling the accounts of the concern the majority of persons and not of interests prevail. Pow. 465

Partnership.

Men are always partners where they are to share in the profit and loss; and are liable to be used as such tho' they are not known as partners at the time of making the contract. If for the sake of owning credit to a more wealthy person or suffers a third person to make use of his name as jointly liable, that makes him a partner, tho' he may have no interest in the concern. 3 P. Wms. 402. 1 Atk. 97. 2 Atk. 227. 2 Atk. 148.

By the principles of the common law when persons become joint owners of property in the same right they are called joint-

tenants, and are subject to the incidents. This is not so in the case of partners are tenants in common, and the right of survivorship does not exist with their concerns. The rule of the law in accounts is altogether abolished by statute. By the bankruptcy act the death of one partner the property vests in his personal representative.

And the right of suing for a share in action, & the liability of being sued altogether with the survivor, and the exec^r cannot be joined. Though the surviving partner must account with him for his share. So many cases also and of the partnership effects, enough to pay the debts for which he is liable.

It may be that the exec^r has made of the property in question, if so he must account with the survivor.

Comb. 474. In case other respects in regard the rights & liability of suing and being sued the exec^r has the same power as the surviving partner. He may receive debts and give valid receipts &c.

In regard to the exec^r and see the is said it would introduce a new form of account

Co. Lit. 44 P.R. 193 Ham. 182 188

suppose the creditor has made the necessary application and recovered judgment against him, without being able to find any effects of his on which to levy his execution. After which he recovered an attachment against the garnishee. This is commonly done by application to chancery. But we have been an attorney and there seems to be no inconvenience in our practice.

A and B are partners in trade. A in his private capacity owes to a debtor of mine. A and B in the joint capacity owe money to C. Both there is no insolvency (either of these creditors can recover the amount of their claim from the firm.*) But in case of bankruptcy or insolvency, the state of things is altered.

If both become bankrupt or insolvent, their property is vested in assignees to pay their debts. The principle on which this is done is this. The joint property must be applied to the payment of the copartnership debts and each partner's private property to the payment of his private debts.

* Can resort to the private property of A & B to the firm or to the private property.

Suppose the partnership effects are worth £250 only. So far as this will go, the company debts must be paid. Then the debts of each partner's private estate must be examined. B owes £600 in his private capacity and has property of the value of £200. This must be applied to the payment of the private debts of B. and the surplus to make up the deficiency in the payment of the company debts.

The further is a reasonable hardship for the private debts of the other.

Suppose A & B in company are £100 and have £500 joint property. The joint debts must then be paid and the remainder must be divided equally between A & B. The private debts of A, amounting to £600 and B's are £1 this £250 to pay them with. This would be no applicable; and though B owes he worth in his private property £600 he is not liable to contribute to pay A's private debts. If the partnership had been insolvent it would have been otherwise, as their private property would have been liable for the concerns of the partners and these principles will not apply

1 Ram. 666.
2 Ram. 279
to Ex. 173 Ley
1 Ra. 874.

of 1.3 are in a manner of a kind of
partnership for the second. Can this
be done? — Must we need of pay his debts?
Suppose one dreamer of half — who gave
you his authority? There have been two
or three different traditions on this subject.
One method is to sell the property of the
debtor & let him in common with the
other owners. Another method has been to
buy and sell the whole mortgage half for
money to the other owner. But he does not
wish to have his property sold at the first
for half its value. I do not know of
any method which is satisfactory and
the common practice is to sell one
mortgage in the property, and record it in
the mortgage as joint owners. But
men do not like to become owners with
another in this manner. But on the whole
this seems to be the most equitable manner.
And I believe this is the only one which
is supported in law.

You attempted to become a member to break
up the principle of each partnership
is liable for the debts of the concern to the
creditors who have received no gain
payment in by a 3rd partner, without the

intentions of the other, as an account
Rand. 371. that they should share in the profits the
1 P. Wms. 632. 2 V. & B. 247 had in the losses, and the 6th case holds that
they must bear the losses together even though
there was an express agreement to the contrary.

I have observed that the survivor and
the executor of the deceased must account
with each other. But the common law
rule of account had it will not be enough
in this case, unless there has been a
balance struck. The action of account
as a bill in Chancery must be resorted
to.

Case of several partners who had con-
4 Ch. R. 715. 727. tracted as a partnership concern, in his
1 Ch. R. 45. accounting, entitled an injunction to
partnership, yet they are liable.

There is some difficulty in ascertaining
when the partnership is liable and when not.
When the contract made by any part-
ner in the name of the firm, was within
the scope of the partnership business and
mutually binding with the contractor.

But if any partner purchases, transacts
for his private use or entities, which are
within the scope of the partnership, in their
name, they will be liable though they were

never had the authority granted to them by entering into the partnership, they have given a credit to the each.

A contract made by one partner for the rest, in the time of their business and common trade, the rest. Yet after the dissolution of the copartnership, if notice of it is not given, a contract by one is binding on the others. The only question is what notice is necessary? It must be such as the circumstances of the dissolution is a matter of common notoriety, it is presumed to be known. The ordinary method is to give notice in the public papers or by advertisements in public places.

If the usual course of giving such notice has been pursued, the presumption is that the creditor knew the fact.

But this is a presumption of fact which cannot be rebutted. Every case must stand on its own circumstances; and where the dissolution has become a matter of public notoriety, or where the usual methods have been taken or no notice will be presumed. It is usual for one partner to agree to pay the debts. But this will not prevent the creditors from

Ibid. 28.
Pitt v. Yalden 4 Burr. 2449.

coming upon all.

Proceeds which is not the result of mercantile transactions cannot be conveyed to a company. A conveyance of land, for instance to J. & W. Co. is a conveyance to J. & W. alone. It must be made to all the individuals of the company in their proper names & never to the benefit of all.

FACTOR.

A factor is one who is employed by a merchant in one country to buy in his for him in another. He acts under a commission and cannot exceed his powers. He may however, on particular his authority will warrant, if it is the usual course of the business. In such case he will be liable to the principal, though as to third persons he is a dead nor. He where the principal directs the factor not to sell under such a price, & he disobeys the instructions, the sale is void, but he will be answerable.

Commissions are general or special. The general commission authorizes the factor to buy and sell and conclude with the property as if it were his own. It vests

the factor with a discretionary power. (Cab. 202.
But in this case, he may be liable for
misman. a penal and disgraceful act.

In a special commission, the important words are "sell and dispose". There are not give a discretionary power. They will not warrant a sale upon credit. (Molloy. 493. 2. Modrc. 2. Com. 638. 10. Mod. 144

This is always to understood by merchants. When the goods are sold, the merchant may always draw on the factor for the money.

When the merchant wishes to bring the factor to a settlement, the former practice was to sue in account but the practice now is to go into Chancery. In Scotland the action of account is still brought & is far more extensively used in Scotland than in England. But I suppose a bill in Chancery would also be supported here, tho' the usual rule is that you can only resort to Chy where there is no adequate remedy at law.

It is very common for one factor to act on agent for a num. of merchants who are not connected with each other. But they must be frequently a joint with. Reciprocally the merchants send a bale of goods, and the

factor sells them all together and half the money is paid down and a credit given for the rest. Now, if the purchaser fails the merchants must bear the loss jointly. And if the factor is broke himself and becomes a bankrupt, the merchants must share with the top, and no one by due diligence, can, as at Com. Law, secure his own debt. This is a principle of the merchantile law which pervades the whole system.

Suppose, in such case the factor draws a bill upon all these merchants. One of them accepts the bill, and there is a top. Does the acceptance of one, bind the rest? It does not, for the acceptance of one merchant cannot bind others who are connected with him, and not his partners.

Co. L. 84. Mollay. 495 4 Co. 84. Fidelity, diligence, and honesty are all that are necessary in the factor. If he uses ordinary diligence, he is not liable.

The Principal must conduct fairly. If he conceals fraudulently so that the factor is injured he is liable in damages. And the knowledge of the factor in any matter is the knowledge of the principal.

Co. L. 468 Cro. Eliz. 5.

There is one sort of all decisions which always attract my mind very much.

It is not an common for Factors to run goods. This they do at their own hazard. And then charge the debts which they run to their friend, to the merchant in their account. Q. p. 265. Bac. "Factor"

Now this charge the Gt have allowed them. I think this is contrary to policy & to common sense and should be glad to have the decision reconsidered. It is a strong encouragement to break the law.

If there was such an agreement between the merchant and factor, then indeed it would be equitable as between them.

A case by the Factor under the Prohibitory act has been in dispute with the merchant. But he claimed payment for his services. Lt 1778.

A factor is frequently chosen in his own character. But if he exec. on his name the principal is bound, and the factor is liable over to him. 2 Bum. 686.

I have seen a very learned book in mercantile for excellent their commissions. The factors also use their commissions. This is not the case with servants and common men. But in the Turnpike, if a top rap-

[illegible]

[illegible] the Factor or Factors in consequence of the Factor or Factors receiving a commission the contract is dissolved.

Q. Per Curiam 1777. If the Factor mortgages his effects and Dec. 4th a commission issues the Bankrupt.

If the principal Commission the Factor is bound to account & pay over notes to his creditors not to pay Regis. the Factor indemnified thereby. If the Factor pay the Factors to be accounted in the name of their principal. Quere whether pay or not will in their remuneration allowance.

Principal recording notice will not avail where the Factors are not concerned with or known as such to record. If the contract was made with the Factor as a merchant trading on his own account, notice to his creditors will indemnify them, if they pay him.

The Factors have a Lien on the goods in their hands for their commission & advances for their other debts.

If the Factor is a merchant Principal and he without Lapse of time with the Principal, he is bound to take notice of the incumbrances of his principal on the goods of his agent.

If he sells his own goods and those of his principal together, and receives both the payment for the whole, and the performance the creditor bankrupt, the debtor of the principal would seem to be entitled.

If a factor who has received of his principal in his possession, but, on his bankruptcy, it does not do it to his creditors, provided it can be identified. If not, they may then receive it into their other effects and must account with the principal for its value. A mere mistake in this case whether the factor be or not at his death or not. 2 Com. 638. Holt 160.

Stopping in transitu.

Stopping goods in transitu.

When a merchant or other person orders goods of the seller to be delivered to him, but is called a stoppage in transitu.

Nothing is more, consider of the provisions of the common law than this. It commences when property is actually delivered in the purchaser and continues until it is stopped in the notice to retain it.

But by the law merchant, goods are held and also in the case of bankruptcy before they have come into the actual possession of the vendee. The vendor may stop them, even tho' they have been packed up and changed on the backs of the account of the owner.

To this if goods are delivered to the order of the vendee before they have arrived at the place where they are to be delivered the vendor has no right to stop them.

But if the vendee is mistaken, the vendor is liable to all damages.

When they are goods said to be in transitu?

L. G. M. 505. If the goods are actually delivered to any person or to the vendee himself and are on board the usual carrier is to transport them to the place of abode of the person or vendee, it is in transitu.

Property in transitu.

So if a bill of lading is obtained the
rule is the same. If the bill of lading
has been transferred for a valuable consideration, it has been holden to be a repo-
ssession and the transitus is ended
and the transferee must take
the property.

2. East. 68.
5 B. 682

Sailors Contracts.

These are governed by the mercantile
law. If the agreement is for so much
per month, they are never entitled to their
wages, until they arrive at the land of
delivery: then they can recover them, if
there is no restriction in the contract.

2. N. R. 566.
2. Com. 728.
Doug. 129.
170.
Burr. 1844.
1 Keg. 576
6 T. R. 398.

The reason why sailors are not entitled
to their wages monthly is that if the ves-
sel is lost, they lose their wages.

If a vessel comes freight, carrying her cargo
safe and is afterwards lost, the seamen
are entitled to their wages, during the time
she carried freight. Hence if the ship performs her outward voyage and is lost on

Sailors wages

during the performance of her inward voyage
the wages on the latter voyage are to be. And if
the agreement to be found till termination, the
rule is the same.

The law merchant is peculiarly regardful of the
rights of mariners. Sailors are entitled to
wages for the time they have served.

Sailors may lose their wages by making
a deviation or desertion. Their rights
depend on the nature of the deviation.

And it is said the Capt. may detain on board
Ld Raym. 210 Peck. 1 Ves. 79 them on shore. But in some books it is said that
for a deviation the sailors should lose their
wages, but if this be so they shall lose them only
for reasonable repairs. So for unlawful absence
sailors lose their wages, if they leave the vessel
before her discharge, where they are bound to wait
till she is discharged. So if in consequence
of their absence the vessel is detained.

2 Peck. 86 If a sailor is so ill during the voyage
that he is not able to be employed, still
he is entitled to his wages. And if he is sick
when he enters on board, it would be a reason

—

Powers of Congress.

The personal powers of the Congress cannot be precisely defined. But they may all be ascertained by examining those subjects with which Congress are concerned.

In some of the States there are no Courts of Chancery, but Chancery principles must still be made use of.

Courts of Equity derive their power from the Constitution of the United States.

Lord Mansfield said the principles of the Court of Equity, is, "to detect the rivers of the Chancery" this marks certainly an intermediate court, from an established rule.

We are informed that Courts of Law decide upon the letter and Courts of Equity upon the spirit of the law.

Thus - again, these Courts of Equity are not governed by precedent. None of them reasons are true in the abstract in which they are here made.

Both Courts of Law and Equity are governed by the spirit of the law. This may be in the Court of Equity here [illegible] [illegible]

In many instances, the rules of the common law regulate the proceedings of the Court of Equity. In such cases it is a principle that the Court of Equity cannot contradict them.

I apprehend that this is one, a marked difference between the Court of Law and Court of Equity. There are certain maxims to which the Court of Law have adhered to a certain extent, and which the Court of Equity, tho' they act upon the same truth, apply to different cases.

This is a maxim of the Court, they that "come contract obtained by duress is void" both at law and equity. The question then is what is duress? The Court of Com. Law, will extend it only to cases of bodily duress. Court of Equity enquire into the principle. Now it is that a man ought not to be bound by a contract to which he did not freely assent. They will therefore extend it to other cases where there is an improper hardship, and where one acts on a want of free will. As if a creditor by having a debtor in his power, compels him to enter into an agreement contrary to his inclination.

A lady of great fortune, being in love the guardian ship of an other, became the object of the affections of a young gentleman, who was

accounting for his agency by the other party until the perceived that the attachment was mutual, when she refused to give her any further, unless the intended husband would agree to release her from accounting for the profits he had received from her wards estate. From this process of reasoning, an opinion prevailed, that the property ceased.

There is a maxim in law, that "contracts against good policy are void." Why should the courts stand aloof of all the cases of this nature, and leave parties to contract, that we will not follow his employer for profaneness. It is agreed, all this, to be said on this principle. But there are certain other cases which are admitted to be against good policy, and which yet it has been refused to interfere. Here the step is, must apply the maxim to all cases. Now one of the most mischievous kinds of contracts is that of betting, which for a pecuniary sum, are willing to risk their reputation, or inheritance. Bets may be made in Chancery.

So, if it is, with a wager, or bets, or bonds, which are found to be predicated on a custom, which is approved today. There, it is law refuse to avoid. Why, may the [illegible] which the man who will [illegible]

But they cannot rescind a contract which is not against policy, since often an erring principle may cause more harm than good.

Fraud in the execution of a contract is void at law, as if one executing contract differed from what he intended by means of the fraud of the other.

But fraud in the consideration of a contract does not make it void at law, & only entitles the party to an action for damages.

But in the Chancery there is no more reason why their contract should be rescinded than the other. The minds of the parties did not meet here. A different contract in fact is made from what the intending parties supposed. And therefore we will apply the maxim in this case as well as in the other.

Fourth of equity, when they rescind contracts, do not inflict a punishment, or penalty, but place the parties, if possible, in the same situation as they originally were. In the case of purchasing unhealthy in exchange, the heir must repay the money he had received from the ancestor. This principle enables us to account for proceedings which we could not otherwise do.

In the case of a mortgage, after the time is
has passed the estate is gone forever and
to the mortgagee. But Coke of Thomas says,
even if there was an express proviso to the
contrary, "If you will pay your money by
such a time," the estate should be revested.

But it may be said Coke of Thomas is
not to make contracts. The principle is
"It would be against policy," to allow men
to tie up their estates in such a manner that
they cannot be recovered and therefore so
far, we will avoid it.

Again, suppose it is agreed between A
and B, that in case B pays the interest of
the money loaned to him by A, he shall see
interest upon interest. There is clearly no
usury, and if the money was loaned off
to pay in and the end of the year, there is
no harm in it. But Coke of Thomas says the
obligation for the payment of the interest upon
interest is good, but so far as it concerns
the interest upon interest, it is against
sound policy and therefore void. And so
also says the Coke of Thomas.

In every matter on which Coke of Thomas
is silent or wavering to the opinion or mind
or in it's spirit.

3 Bl. 409
Prec. 274.
10 Mod. 1.
2 Ch. 108.
127.
343.
378.
734.
4 Ch. 289.
1 Ch. 22.
Powl. 264.

Fraud is cognizable in Eq. of law in a great variety of cases, and in some shape or other in every case.

If a man is charged in a personal contract, he has his remedy in damages, and Eq. of Chancery will not interfere.

Contracts respecting real property are supposed to be more important, and therefore Eq. gives a specific relief.

It is not true therefore, that "Fraud, Accident, and Trust" are the peculiar provinces of Court of Eq.

Suppose a man takes his bond or note, and can prove it so, of course will relieve him at Law as well as Equity. Both Courts relieve against Accident.

Fraud in matters of Trust are the peculiar subjects of Eq. jurisdiction. Virtue had the mistake a very considerable bearing of Eq. of Chancery. His arises from the power of controlling or specific performance. It is on this ground that they have assumed jurisdiction over Frauds.

Courts of law in many cases have also concurrent with Courts. As in all cases of tort in, the remedy for an action of the trespass or action on the case.

Fin. Cod. is clear from the nature of the common action for money had and received.

Even all these then the Cts of Law have a jurisdiction. The difference is they cannot go so far as Cts of Equity think themselves warranted to do on the principle.

Cts of Chancery are not tied down by precedents, as Cts of Law.

8. Dik. 147.
1. P. Wms. 287. 568. 645
3. Atk. 177. 544.
4. Com. Dig. 74.
2. P. Wms. 263.
1. Ves. Jr. 16.
1. Atk. 600.
2. P. Wms. 640. 680.
2. Vern. 289. 316.
3. Atk. 520.
Bitf. 1. n.

There is an essential difference between Cts of Law and Chancery in the mode of proceeding — of trial, and of giving redress. The Cts of Law suffer in the first respect, yet under the second appear, they are governed by the same principles as Cts of Law. Though Cts of Equity suffer as to the mode of trial, and of the contract, of which a specific performance is sought, in one or which a Ct of Law would not entertain an action, as it contravenes statute offences and the injured will not afford redress.

Courts of Chancery when they decree a specific relief, have no uncertain. They cannot alter their sentence, by decreeing a penalty in case of non performance. If the penalty is demanded and no conveyance is made by the person against whom the decree is made Courts of Chancery have a power of making a decree therein, by which the title is vested.

Powers of Parties

there are in point of equity other reasons
since they to matter in a contract the
nonuse of the Statute

Courts of Chancery will often refuse to
execute a contract, which they would execute
if they should be asked.

Some time then even in a case of mutuality
in a contract, it may be so that the Court
would not compel specific performance
and a time so that they would not do so
also if there is any fraud, or unfairness
whatever, they will leave the other to his remedy
at law, when the circumstances will not authorize them to exercise
the compulsive power "where there is an adequate
remedy at law, the Court will not interfere,"
means both in the Equitable Chancery and in our
courts. Hence this is the reason why Courts of Equity
will almost invariably refuse to interfere in personal contracts.

But there are cases where a party may have
a remedy at law in which Equity will give relief.
Suppose a contract is obtained by force, the
party forced upon it may bring it in his defense
in a Suit at law. Will not Equity then interfere and rescind
the contract on application? Yes — and the principle
is that the obligee may never have an opportunity of using
his remedy at law — for the obligee may decline suing upon
the contract, until the witnesses to the transaction are dead.

In all these cases the equity will operate
[illegible] in restraining retaining the property
till the opportunity may not [illegible] to be [illegible].

Upon a decree [illegible] and [illegible] of [illegible]
enforce their recovery of specific execution, the [illegible] 116.
[illegible] equitable [illegible] [illegible] [illegible]
[illegible] [illegible]

This power is not exercised merely from
some [illegible] [illegible] [illegible] [illegible]
and [illegible] the [illegible] is not a [illegible]
in the [illegible] [illegible] [illegible]

It is generally said that no contract will
be enforced in [illegible], which does not
the [illegible] which are necessary to enable
the parties to recover at law.

There is no [illegible] that [illegible] [illegible]
of [illegible] were [illegible] [illegible] to adopt
the rule of [illegible]. They [illegible] [illegible] Lutl. 179
to [illegible] [illegible] were [illegible]
[illegible] in the [illegible] for [illegible] [illegible]. 2 Rev. 6. 4.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 1 Ved. 354
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 368.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 1 Vesd. 27
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 2 Rev. 6. 14.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

In the common case then of [illegible] [illegible]
to a contract about real property, it is a
general rule that if the contract is void, or
not to recover damages, it is void in equi-

to obtain specific performance. But it seems to be an extraordinary question, whether they will decree specific relief, or leave the parties to their remedy at law.

Marriage articles, entered into between husband and wife, before marriage, will be enforced afterwards in Eq.y. The courts of law will not enforce them. — Not because there was any disability at the time of contracting but because the wife has no power of maintaining an action against her husband. But is the contract void in ord.? So be it, if the husband neglects to fulfil, all claims in action delegable to the wife, are her, but otherwise. But are not. If before marriage, the husband gives a bond to his intended wife, payable after his death, she may, at that time, maintain an action against his executor upon it. The contract therefore is not void.

2. Vern. 480. But what do Chancery offer in the case
1. Atk. 444. of a
2. Ch. 255. Bond? They expand the husband &
1. Prob. 17. above supposed. They compel the husband &
93. 94.
2. P. W. 243. wife as trustees and will permit the wife, during
2. Atk. 97. coverture, to bring an action to compel the performance of a marriage settlement to be performed during the marriage. The intent of such settlements would be defeated.

The Elementary writers say that "when there appears to be an agreement in substance between husband & wife whereas tho' it be void at law, Ch. will decree a specific execution of the covenant." Now this is not true that Chancery will decree performance of an agreement void at law. The case put to exemplify this rule is — when the wife before marriage agreed to convey land to her husband, after the marriage. But this contract was not a void contract. Only, at law, the husband has no power to sue his wife. But if after a bill filed, by him against his wife, Ch. will decree a specific performance. They will not here send a penalty on the wife, but by a decree, vest the title.

2. Pow. 17
Prec. in Ch. 157
2. P. W. 243. — where contract at law declared to be void — [illegible] - tion.

I will now mention a case in which Ch. can make no reason for the refusal of Ch. of law to interfere. A & B for their mutual benefit executed a joint & several bond, and one of them pays the whole, he is obliged to resort to Ch. to compel the other to contribute his share. Since 40 years since the experiment was made in this State and the Ct. of law have given a remedy, as well on voluntary paym. as on forced.

2. T. R. 947.
1. Pow. 315.
2. Ves. 371.
3. T. R. 466.
Eq. Ca. Ab. contribution.
2. Bl. R. 268

It is an agreed principle in all cases that in contracts, when the means is not reciprocal, against one he may compel the other to com

Process of Chancery — Specific Performance

tribute; but in no of common law payment
Decreed in law, to be true in Eq.

Can this be done in Eq. when the whole
demand are recovered from one of several
for person? Decreed, the same with wd
pine any remedy. Now of Equity had power
to set the Abbot the law, restrained them
in some cases, inconsistent to be said. Tho' for
cannot control the jurisdiction of law.

If the per on remedies on the [illegible] wall
tee is entitled to the assistance of the Ct of Chan-
cery. Rushane jurisdiction of Ct. Suppose the
man delays to bring and the [illegible] in
New York the Ct of Chancery in Rome cannot
a person [illegible] in the money tho' they cannot
Ed. the title.

So the rule that a law Ct of law will give
damage Ct of Eq. will decree specific per
formance then is an injustice and oppression.

Ct of Chancery can not make a decree to ap-
point when the property to take ed from a bor-
a little Lotte. With this true law and injustice
in such a case! Not a bad wd add
in it? No? The money recover damage per ad law.

If the defd. hinself had id and of his power
to perform specific Ends the decree, Ct. will the
him under a penalty. Also do the actual doing
without the intervention.

This is well, that a decree without the consent of the party, it has become impossible specifically to enforce an agreement of B, which will decree a specific performance. Suppose A enters into an agreement with B to convey so much land to B, to which, on a fair trial, it afterwards turns out C had the title. Act of B will cause B to his remedy at law. But where the purchaser knew all about the transaction before his purchase he is liable as well as the seller.

A contract is so drawn that the intention of the parties is misconstrued, and in consequence of a formal defect, courts of equity will not take cognizance of it. Courts will decree performance.

This is all the principle that B of A can correct mistakes and reform the contract to what it was by parol, before it was committed to writing. And then instead of strange principle, they may decree relief. 2 N.H. 243

Take B of A and B can correct a mistake in the description of land by which he is misled. 2 Bur. 1-17 254.

After they have corrected it B of A will give a decree as it may therefore, without correcting it decree specifically as if it had.

I have noticed that it is a general rule that when there is an adequate remedy at law, Chancery will not interfere; and that this does not apply to those cases where the Court of law may not have an opportunity to exercise their power.

With respect to specific performance, it will not be given for the remedy is always adequate at law. There is no difficulty which will prevent their interfering in those cases where there is no adequate remedy at law, however.

It says a bond of 10 and point, the merits of bond, the 300 £ on a high recommendation of town and that, this bond was a very wicked one — and it applies to Court to rescind the contract on wicked the note. Why, may the Court of equity, should you resort to Court of law for accounts? The difficulty is — it is a bond of 10 £ 5% 37 and if he is allowed to recover on the note the remedy in damages will not be adequate.

Rev. 215. Ch. R. 84. 1. Sch. & Lef. 447. 1. Ch. R. 37. 2. Ch. 305. 2. Ch. 305. 2. Ver. 482.

The Court of Ch^y will therefore interfere the note on the ground of a promise of accounts, have an opportunity of letting off the judgment against it.

It is a rule that although the remedy may be adequate and law and yet some other circumstances 2. Rev. 219. a right to go into Court the rapid interposition.

It is of Ch^y has an right to give relief in cases of a conveyance of land, reason 18;

since D. has a right to come into Ch.y to compel a specific performance, the Def.t should be allowed to come into Ch.y to recover in damages though the remedy at law is fully adequate. This is not allowed in Conn.t

When a party obtains a decree of specific performance of a contract which is in his favor, he must either have already performed his part or must submit to perform it under a penalty. "He that wants equity, must do equity." 1 Fonbl. 383. 2 Pow. c. 17.

There is one species of contracts personal in which Ch.y will always decree specific performance and that is contracts for transferring stock. The reason is, that almost all these contracts are made upon speculation, calculating upon the probable rise and fall in the prices. Damages at law might not be an adequate compensation, since only the value at the time when the transfer was to be made can be recovered. Whereas stocks at that time may have been upon the rise. Chanc.y will therefore compel a specific perform.ce This may be considered as an exception to the rule. 2 Pow. 17. 232. 2 Vern. 394. 1 Pow. 410. 1 Eq. Ca. Abr. 201. 2 Salk. 2. 2 ... can get stock, the ... & value as taken that time to time of trial.

Sometimes one cannot perform a contract, in consequence of the happening of a subsequent impossibility. & and sometimes he is prevented by act of God. In these cases, if the party is willing to take up with the performance

of such part of the contract, as is still possible
Chancery will compel a performance of so much.
It is of frequent use to the practice of the Court in
Eq. of probibility Ecclesiastical Courts to be
1 Scott 207. 2 J. & R 254. 1 Ves. 448. 1 Atk. 84. 1 Bro. 284.
kept for more than 9 years, Sect. Land conveyed with L. W. to leave him such round,
for 10 years; if L. W. is willing afterwards
to take up with a lease of 21 years, such
a part performance will be decreed. So if a
house which is agreed to be built with the land
or round — a lease of the land will be enforced if required, by the other party.

If the contract appears to be so fair and
reasonable it is to have his election to perform the
contract, or to pay money, damages, with an
2 Bro. 341. 1 P. W. 579. exec. & specific performance. This rule
applies in all cases of hereditaments & so man
should enter into a bond with a penalty the
penalty being greater than the bond, the Court
construed secure, where a specific performance will be
exercised instead of the penalty. considered infra

I will now state what appears to be an
exceed & equitable decision. Jones and Smith
Jones devises an estate to Sect. revocable
in fee to his heirs or to the heirs of his body. Jones
was unacquainted with technical reciprocal
but that this was an estate for life only in
Sect. and an inheritance or estate tail to his heirs.

Held the words "and heirs" understood in law, as a word of purchase, according to the person who should take, but held the quantity of estate. For the example adduced in the 3rd section, the words "for life" are considered as words of limitation. But the residual character taken, in the first case an estate in fee simple, and in the other an estate tail. This will be understood.

Now what does a B.D. of B.P. Lay before a mortgagee who is about to enter into a mortgage and enter into a covenant that his estate shall be settled upon him for life, with the remainder to his heirs female. Will a court of Eq. construe it as an estate in the mortgagee, in fee simple well they limit it in strict settlement? certainly the latter. The object of the mortgage articles would be defeated for the covenantee would then be in the same situation as before. For the premises will in B.P. be considered only as bound for life with no power to appoint the heirs who take as a class. They will come into effect the articles according to the intention of the covenantor.

Suppose an estate was conveyed to A. remainder to his heirs, can a B.D. of B.P. then say that B. takes only an estate for life. No. Held when there is only a covenant to do this, and a B.D. of B.P. are called upon for a specific performance, they

Doe v. Rickards 2 Ph. 241
T.A.M. 23.
2 Ph. 349.
2 Ph. 349
2 Ph. 441.
1 Bro. 88.

will then put their own construction upon the
transaction. And as this construction has been
upheld, which is Hamilton v. Pa.

Whatever is agreed to be done is considered
in Eq. as done at the time of making the con-
tract. If the parties to convert a real
land of the terms are entitled "lands" to suppose
an actual conveyance. So that if in lieu the
covenantee, Pa. of Pa. would convey
to him property as noted in the covenantee. If
in lieu the land, S. W. the covenantee still
to whom does the land go? to the heir of S. W.

Upon supposition S. W. had agreed to pay
for the land "money" and the covenantee is not
yet made when of Pa. to whom does the
money when paid on the covenant go?
Not to the heir but to S. W.'s executor. Because
if this contract had been executed at the time it
would have been personal property, which as
a debt, would go to the executor.

Suppose, S. W. Pa. covenant to
convey to S. W. and after wards in his will devise
as the same to S. W. Pa. convey the
original covenant, or a deed to S. W. as
the title in the covenantee, and not in
the devisee. Pa. consider the covenant as a
beneficial title a Dall. and the land
also in order.

1 W. 61.
1 Atk. 572.
C. Rep. 55
79.
252.
1 Ved. 155
Fonb. vol. 2. p. 359.

Chancery Power of Specific Performance

295.

But this rule is never supposed to operate as a bar to fraud. As if A articles to convey Blackacre to B, and the deeds are not delivered; when A for a paper price conveys the same land to D a bona fide purchaser his performance shall not be compelled. Nor is this a universal rule. For if a trustee for the legal title, need the conveyance of property and convey it to a bona fide purchaser, the settlement is void as against, and the cestui que trust must resort to the trustee for his remedy.

But is a rule of universal rule, that when two persons stand in equal equity he who has the legal title shall prevail and hold the property. But if neither have a legal title, then the may in optioni qui prior in tempore potior est in jure."

But if they are in equal equity he who has the legal title shall prevail, though the other is prior in time; and this is the principle on which the construction of taking upon paper proceeds.

If a case had occurred in which, matters were equal, but well founded a special reason, though, in consequence of which it has become unequal. A covenants to convey Blackacre on the terms that he shall receive an annuity for life. This is perpetuity, and is illegal.

2. Ves. 60
46
3. Ath. 291.
1. Ford. 359.
1. P. Wm. 276
282
429
2. Com. 338

1. Ford. 410
413
1. Ven. 575.
583

1. Ves. 443. It happens that it was announced the very
3. P. W. 221. week. Others that time is not essential, the main
1. P. W. 483. 2. Ves. 112. 240. object has not yet become void. Ch. Eq. 2
2. Ves. 189. 2. Ves. 83. 236. will decree a specific performance.
2. Brown P. C. 415. But when there is a condition precedent to
Prec. Ch. 156. be performed, if it becomes impossible to perform that, Ch. will not then decree a specific performance on the part of the other contracting

Suppose the agreement for a bond or covenant of performance is covenant, or agreed in Eq. what
2. Ves. 216. is to be done? The Eq. is usual to send it in the form of an issue, to the Court of Law for decision. And this practice is adopted in most of the States. In Eq. we never send the issue to be tried by a jury, in the C. of C. The C. have power to try the fact themselves in many cases. But the usual method is to appoint a committee of three of the first counsellors in their profession, to enquire into the fact. And on this account is implied all the trial by jury. This has been an invariable usage.

I have already observed that C. of Eq. will often
1. P. Wms. 57. refuse to decree a specific performance, when
2. P. W. 383. 3. P. W. 383. 2. Ves. 143. 225. they would not force covenantees to rescind.
1. Ver. 7. 224. 2. Vern. 12. Ch. 72. In those cases where there appears to be so much hardship and confusion in the bargain, it renders them to leave the parties to the remedy at Law.

A contract must be real fair, and mutual, is nature the Ct to decree a specific performance.

If the contract was a voluntary one, though made Ct will not decree specific performance. Nor in any case where there were unreasonable agreements attended the origin of them.

2 Atk: 21
1 Ves. 150
1 Atk. 10
2 Ver. 241
256
1 Ver. 241.

Rescinding Contracts.

It is a rule of Chancery when they rescind an agreement, to do perfect justice between the parties; and they will rescind them upon terms: for ex:

Suppose it may be against policy for men to lay themselves under heavy penalties, yet if they fail will not relieve against the act, but only against the penalty.

So in cases where inheritances in expectancy have been bargained away, they will on rescinding, compel a restitution of the money.

When Chancery will RESCIND contracts.

Chancery will sometimes rescind contracts on the ground of mistake when there has been no imposition or fraud. Nor is our principle of law violated in this. Money paid by mistake may be recovered back at L. Law. But ab of this right to recover the money back, may be waived. Thus suppose money has been paid for a piece of land which was mere description Ct will relieve.

Suppose the mistake was on a mortgaged which

was the sine qua non of the contract & will relume. Suppose A has a house & lands which he wishes to sell to B, who is desirous to purchase, on account of a small spring which has been brought by the succession within the limits. B asserts & turns out, that the spring was without the limits surveyed. This being the sine qua non, the Court will relume, and rescind the contract.

Will they interfere in every case of mistake?

Powell Pro. If there is a material mistake in a material matter, which would not have prevented the idea had not altered the price, they will not rescind: but rather the parties to take their own advantage.

Powell has treated this subject very well in the 1 Volume of his essay on Contracts. He there says this case. A farmer wished to purchase a farm (a clay) and he was told as a fact and purchased on that supposition but turned out to be a sandy. The rescinding the contract was made, by the Court.

Pro. Lord will not, I do said, rescind a contract unless the mistake is as a material of the essential are supposed to have been the cause. This mistake is not true. When a man has mistaken his right, and acts on an idea that his rights are supposed, plain his loss will be not rescind the contract.

three brothers were left by their uncle, the middle brother died. Did the survivors or the other brothers have the actually or the property should come in for a share? They referred the question to a schoolmaster, who said the third could not succeed and decided that the whole belonged to the younger. On this they went to a settled Presbyterian minister, who also rejected it as unfounded upon any ground of justice.

Powell v.

A case was once put to me, under circumstances which made the supposition that he was bound to execute an unfounded in conformity from which, in reality, the same principle would. The obligor was persuaded of his rights.

1 Bro. 32. 1 Bro. 123. 126. 704.

In other cases, where there has been a misapprehension in fact, it has been influenced by to recede.

I have already noticed that Lord Hardwicke would recede contrary from friend. I have, also, Lord Hardwicke have over-rules contract to recede, where there has been a fraud in the consideration. He does it in, they are not considerations, as said. Are a bad principle do of Lord to recede? If the contract was obtained by fraud, certainly a sufficient command was altered with the parties, from what was intended whether that fraud was in the consideration or in the consideration. Their minds did

Power of Chancery. Recovering contracts.

not need. Ch of Ch therefore entitled to decide the contract, and have the same as they were before. So in the case where an agreement was induced by some in the purchase of a horse, to give a better price for the first mare. Ch of Chan. changed this principle, and gave indemnity for the value of the horse. But had this been a proper subject for Ch, he would have rescinded it, either.

2. Pow. 70
222
224
261

There is a kind of fraud called Bis hand opinion which Ch of Ch will not receive.

2. Pow. 261 — A being a poor companion of B by, requested him 222 in opinion his wife and children, induced him to make a will giving all his estate to A. After this was executed he was induced to make another will, by the friends of the family, by some misrepresentation, and revoked his estate to A to his wife. A brought a bill to have the last revoked. But the Ch said it was a fraud, and refused to interfere.

Ch will interfere in personal contracts when justice cannot be attained, and then — as in making offers, when they are rejected.

Well Ch of Chancery rescind a contract, for mere inadequacy of price? No, it could then in [illegible] contract. But contract of the parties is now void

2. Pow. 75
1. Pow. 27
1. Ch. 7
1. Eq. 62
3. P. W. 170

equally if it paid through some fraud or mistake or unfairness was used.

Course of Trade. Accordingly Court & Jury
[illegible] the contrary opinion. That [illegible] not strength
in a case where mutual mistake, by the fraud
of a third person, prevented a contract.

A contract may be set aside in a court where
was attained during a fit of intoxication. It
is said the then knows no such principle.
This indeed is a principle of policy that drunk-
ness cannot excuse a crime. But this is very
very different from cases of contract. Why, shd
an man take an undue advantage of the ide-
ation of a drunken man? It is a taking a
fraud. But in the cases which have been
decided in E.L., the man who wished to be re-
lieved was made intoxicated by the other for
the purpose. And I am satisfied, that the Ct
would not avoid a contract made during in
toxication tho' it might, of course, other circumstances,
shew.

There is one species of fraud which I have not
yet considered. This is a fraud upon third
persons. If I am not been the occasion, that I
of an unwarrd interfere, tell Parties. Chance have
always avoided the contract. Now, Ct of Eq.
do the same. Suppose A is a bond entering in
to a marriage with B. whose father to consent
to settle 1000£ upon B, on condition that D will
settle 1000£ on his son A. D, consents, with
a secret reserve by his son, to release 500£.

Their reliance on an oath is founded upon the fear of the young woman, & their security, the fear of the son, to whom it was given could never be vacated by, or the a[illegible] of his father.

But when a man minding to be emancipated from his father, entered into a contract with his creditors who all with a view to make him a man 2. Par. 6 Pomfret v. Pomfret expected to accept of a certain sum except one, who would only give the double an consideration of receiving an obligation, secured by his whole debt. This was relied against as a fraud upon their honours.

Contracts occasioned by fear though void P. Br. 112 639 by Roman Church, are considered in Eng. though void 1. Br. P. 969 2. Par. 130 a & 1. Ver. 87. 264 in matters in the one case, as well as the other. 3. Br. 298.

These cases I noticed before. But there are cases where though a certain kind of fear, entered into the agreement & Eng will not vacate it. As if a young man, who would be heir somewhat ashamed of reverence to his father to be cut off to a familiar other, from fear of his displeasure Eng will not rescind it, on this ground.

It is a common law maxim that a contract obtained by force is void. As e.g. both are necessary to the enemy, because they is an inconvenient for the person to use his influence to bring it about.

But the P. of law have [illegible] in the case of

[illegible] Accepted them, and selling under 3 P. Wms. 31.
Bucci in expectation. Why they should be disappointed 2 Ven. 346.
Aff. 94
1 Aff. 354
350.
result to accrued. But Cty carries the principle through in its whole extent.

Chancery have also assumed the power of relieving against unconscionable contracts. This is done only when he who complains of the wrong, wishes for a decree rescinding the contract. But such a contract would be void at law. Stone's case stated and the exception waived. So far as they go, they act on the same principle with the 3d system, but are partially restrained by their principle of mere hardship between the parties, which does not require that the whole obligation should be void. Why are applications made to Cty in these cases? The ground of these applications is equity, a sound principle, in an appeal to the conscience of the obligee. It takes advantage of a real oppression which Cty often has occasion to see. A man cannot be compelled even in Cty to disclose what he has received unconscionably, because this subjects him to a penalty, but it is attained with great a more reservation. It is other reasons for applying to Cty, if that the obligee willing to have the amount of the bond but on some conscionable consideration.

I have been questioned in Court whether application

applied to such in these cases. We are [illegible] authorising the parties to sell a certain quantity of their property to remit the expense and also the legal interest. The answer concludes the [illegible] with a decision to award costs, but all the answers in a note [illegible] so that if the 3d objection and all the answers they ought not to stand as [illegible] the 3d requires that judgment be given for the [illegible] and judgment for a second.

Interference of Chancery in setting aside an Unlawful Contract.

The interference of Chancery in rescinding contracts of which the object was the performance of some unlawful act or of which the consideration was unlawful has been a subject of dispute. It has been said that they have a right.

There never was any doubt but that a contract founded on an illegal consideration was void. The only difficulty was, could parties be introduced to prove it so? Chancery was of opinion that in such terms was evidence to the this, the consideration of a contract should be written. The Court of Exchequer did not oppose this in any instance. They adopted the maxim with this construction, that unless it appeared that there was no consideration in law or where a consideration was admitted, the party should have to prove that the consideration was illegal.

the transfer was not had on a testimonial
compromise, and that a man cleared with against
his own admission stands a condemnation. Bull. pro Con.
2. Stil. 97
In saying that there was a condemnation the jury
does not acknowledge that there was no hospitate
and this is more the rule in Cases of Loan.

But applications are admitted to be made in Equity
because the applicant might not have an opportunity to amend it in a Court of Law, until his mistakes were cured, and it was need of his, Lawn to know in its parts.

It is said there is a difficulty in reconciling
the cases. When the contract and consideration are still
executory, it may always be avoided. But when
the consideration tho' bad is still lawful, a bond given
for that, may still be recovered.

Then was formerly a distinction of this kind that bonds
given to discourage a marriage for the sake of hon.
future pollution were always bad. But that is 339
the bond was given for lawful concerns of christian. 2. Ch. 64.
2. P. W. 472
It was thought to depend on the character of the
woman, whether she might recover or not. But
it is now established that such bonds are all good
and that a common wh— may recover on
them as well as a virtuous woman who has been
seduced. Though a single contract in these cases
is the good for want of consideration.

I have already noticed that a foreign marriage contract will not be enforced in Eng^d. But there is this exception that marriage settlements made after the marriage (which of course are not contracts) will be enforced in Eng^d. Indeed the settlement was a reason alone why, and did not depend on circumstances alone. For be, suppose he has received a very considerable portion of his estate, he would be a settlement and remainder and it would enforce such an arrangement even after the death of the husband.

Eng^d of Eng^d often refuse to execute foreign contracts. Bar have been commanded to have been. They execute such contracts they said.

There is a species of contract in which Eng^d will enforce a performance, which are said to be operated on the territories of France and Spain. It is said they have done same about the Eng^d of Spain. That Eng^d of Spain, entre stations in a mine into this contribution I admit but now I have no doubt that they will act on the same principle.

The Eng^d of France and Spain requires that some particular contracts concerning bankruptcy should be in writing. Eng^d of Eng^d will without doubt enforce such of these contracts which are not in writing. But they recognize the principle that the contract one and if there is no this more in the case as would be Eng^d of law.

But if the under makes use of this foreign contract

cause found, and afterwards we should immediately, incumbered by mending a performance. It made a bargain with B for a lease of his farm for 10 years, and among other things, it was agreed that A should build on the premises a barn &c. After he had completed the improvements, B says he shall stand no longer and declares the contract void on a demand of the rent. But will say B, you have made use of this penal contract, for the purpose of fraud and thus a specific performance should be moved."

1 Ves 274 341. 420 & Ch. 3

Take the rule to be this, that wherever a man extends his fraud or bargain, and avails himself in any way of it, but will move performance if they choose under the circumstances.

It is said that where delivery is upon the footing of money paid, which may be recovered back, a bargain but will not encourage the contract. But this is not the rule, as one of the cases I will notice will show.

Chancy also exercises the power of relieving against penalties. Ct of Law would give no remedy on the principle that they had no right to interfere in making or altering the contract or agreement. Ct of Chy considered these contracts when improved for the purpose of a forfeiture of the penalty as against conscience and fraud. But the contract itself was not considered as void. They therefore ~~[illegible]~~ amended the contract and reduced the penalty to a just sum [illegible] between the parties. This [illegible] was afterwards made into positive law by Stat. of Anne [illegible] Chancery limits of a certain jurisdiction. This is a remedial statute & has been adopted in in most of the states. [illegible] The Stat. included only the cases where a bond for payment of money with a penalty was given and where a bond is given in a penalty for nonperformance of a covenant. 2 Greenlf.

But when a bond is given with a penalty for the nonperformance of a certain act stipulated not to be done

From these cases the Ct have considered [illegible] bonds which did not come at all within the principle such as where parties give bonds for appearance on a criminal information, there is no reason for [illegible] in these cases. Where the bond is given [illegible] And [illegible] it has been understood that a penalty [illegible] stipulated [illegible] shall be paid [illegible] there is no [illegible] reason for it in the [illegible] these [illegible].

The principle we have laid down in this Treatise
of penalty is entirely built on the basis implied
in the performance of a contract, which the will
changes into a mere payment. Third of Accu-
sation and the nature of stipulated damages, this
more curious. Suppose A should lease a farm of a
hundred acres for which he should pay 100 l. but
care that if he should improve a certain meadow
he should pay 20 l. this is in the nature, not
of a penalty but of assessed damages.

2. Roll. 284
2. Rem. 816
287

Thus may be inferred, the application to determine whether
the penalty is in the nature of assessed damages or
of a penalty. But in such cases, it may easily
be done. If it should be shown to be assessed damages,
as the 20 l. will treat it as a penalty.

3. Atk. 510
3. Mod. 12

In cases of covenants to do a thing within a stand
will mean specific performance, or may either
award to be a bar of law for the penalty or the 6 l. for the
a decree, in which latter case the penalty is void.

2. Rem. 60.
Ib. 4
176.

Contracts are often entered into for the performance
of distinct acts, and different times, and the pen-
alties annexed. Suppose on the failure to perform
one act the other, one the penalty, the 6 l. will
stand in force. Also there, on the most frivolous accounts
and it is hopeless coming upon the forum in order
in the nature of a double stipulation.

2. Rem. 214.
Ib. 57
2. Rem. 57.
1. Rem. 74.
1. Rem. 54.

Review of Ch.

the manner of the covenant in the Indenture, & when a bond has been given with a penalty for the payment of the money in their. The Ct of Ch. directed an issue to be tried in the court below, & to ascertain the quantum of damages.

Mr Justice Ch. The question on which Ch. sought relief in this case is the same as in the other, & I would be against decreeing specific performance to yield the estate in lieu of money in such a manner that a total exclusion and non-claim should occur. The contract, strictly is, money, and the mortgage to stand as a security for the money lent. The mortgage is simply illustrative, and Ch. by decreeing the contract performed, if the principal and interest is offered and paid, would be adding the credit title to the credit of some Ch. trust the mortgagee, after the land sold, as a trustee for the mortgagor.

In all cases Ch. will compell a more nicetied trustee to a performance of his trust.

Ch. I have known nothing about an equitable foreclosure. The credit of the mortgagor is, merely, an equitable credit. When there is an agreement to give compound interest it is a thing perfectly well, & I have read neither Ch. of law or Ch. will give more than simple interest.

I have before mentioned that Ch. 4 will compell a transfer of stock. And the Lord Eng. Ch. 8 is cited that the Lord is attached in that method and that then will come the power of Parliament to do a Law.

Compell Trustees to do their duty.

But if the Trustees 3 have power to compell a trustee to do his duty. Yes — I should consider that the rule for the purpose of which the Ch. of Ch. will compell the trustee to sell the property for that purpose. By the Eng. law real property of an infant devolves over to the heir and personal to the exec.

When a mortgage of land is made for payment of debts. It is probably with a view to convert the personal property: for the debts and payment of the debts of the is a surplus of money that over to the person who would have been entitled to the land and not to the exec.

Suppose the trustee refuses — the accounts cannot? No. Chancery will appoint another.

Inquisitorial Assessors

It is a rule in the Ch. a law that whenever money is required to pay debts, there is the intervention of the Ch. of Ch. These debts are paid pari passu without any preference, as in other cases. Simple contract are satisfied, as well as bonds. If you need to do it in case of a refusal of a trustee the money always equitable assets, even tho' the trustee pretend his debts are barred as to Ch.

Suppose this all a fair and equitable, and no preference is given in any case.

If A mortgagor bound to pay 200 of the value of 1000 and fails to pay it at the time, had estate has he? None, at law. Suppose any part of this estate is wanted, in case of the death of the mortgagor, to pay debts with. Can a man do it by application to Ch'y. This is usually by application of the creditors, and it is on the principle above mentioned equitable assets and all the creditors share alike. The rule applies to all cases where there may be a necessity of applying to Ch'y.

Marshalling Assets.

Ch'y of Eq'y keeps the name of Marshalling assets. A. dies, leaving real estate of 1000 value together with personal property, leaving debts unpaid both by simple contract and by bond. The bond-creditors can come, either upon the bond or personal property. Suppose they consume all the personal property. What are the simple contract creditors to do? Ch'y of Eq'y will come to the relief of the bond creditors, which have recourse from some inheritance, the amount of which debts. It is equitable therefore that such estate shall be liable to that amount to the simple contract creditors who might, otherwise, have recourse to the personal property.

This is a very great power in the [illegible] [illegible] an whole [illegible] after the most [illegible] purposes. [illegible] [illegible] [illegible] come with [illegible] with it.

Ch. 10th. will compell the heir to pay so much out of the real [illegible], or to have a lien upon the land in [illegible] of him. [illegible] of the [illegible] that the heir shall [illegible] the [illegible] which descends from his ancestor. But this principle of law is now established, that [illegible] will not [illegible] it.

Suppose that one of the specialty creditors obtained his debt, entirely from the heir when there was personal property sufficient [illegible] will compell the executor to reimburse the heir.

Executor and trustee &c.

Trusts of the executor and trustee according to the intention of the person who created them. Here there is sometimes a difficulty in ascertaining the intention. Suppose a man [illegible] a child of [illegible] years old and conveys his estate to B. [illegible] of his own. Now, there would be no doubt in [illegible] that the intention of the testator was [illegible] the guardian to the infant during his minority and then [illegible] the legal estate. But suppose the [illegible] that was not an infant but a [illegible],

the testator unconditionally commanded the trustees to keep the real estate from the sons and grandsons, he would not execute the trust in a conveyance. The state of the family in these cases, must be understood, before they will advise a conveyance. They will advise the law in cases, in the completion or execution of the testators intention.

If the trustee sells the estate which is held in trust to a bona fide purchaser this shall defeat the equitable trust of his estate. And it can be done in no other way. But if the purchaser knew of the trust, or had the means of knowing he ought to be considered not the absolute.

It is questionable in Court whether the cestuique trust can ever be deprived of his title for more than a time in Court that every deed shall be recorded in the office of the town clerk. Would not a purchaser then, be guilty of a neglect in not examining the records and ascertaining the trust?

I know there have been contrary decisions respecting mortgages in Court but these, are contrary to every principle.

Gentlemen if you have purchased a construction different from theirs and have decided that the deed should be examined by a town clerk before he can be held the owner of an equitable trust

There are cases of implied trusts which the
Chancery will compel within the statutes of frauds
and perjuries & will not allow. From an attention
to the cases of constructive trusts arising from
Courts do not consider trusts, which are implied
from the circumstances of the case, as
coming within the operation of the statute.
Suppose A conveys to B, to pay the rents & profits to
Mark, and B with money given him with
directions, the use of A, purchases and takes a conveyance
in his own name. Courts will consider him as a trustee.
Again, suppose A is desirous of selling land, and a distress
made in order to facilitate the sale, he conveys the land
to B for the purpose of selling, by a deed in
his own name. Courts will consider B as a trustee
for the money, to A.

Compell a discovery of distributive shares.

A & B are sworn, whereas, executors of Thomas
selling persons to administer testimony. The reason
for applying to A is often to obtain testimony
from the opposite party. This may be done
by a bill of discovery & obtain testimony in a court of
Equity, which may afterwards be used in a court of law.
A trust which is fraudulent can never
be created in Equity. Thus if A for the purpose of
defrauding his creditors conveys land to B to keep
for him in trust. A afterwards pays his creditors and

Ch. Rep. 255
1 Vern. 352.
2 Vern. 17
238
Forbes. 61
1 Ch. Ca. 1
1 Ch. Rep. 286
2 Ch. Ca. 174
Wilkin. 29.

2. Vern. 683. and such cases [illegible] be a necessary consequence of refusing, and cannot be compelled on application to [illegible] this is from [illegible] merely.)

When applications are made to Ch. for a discovery in most cases they may grant relief though the subject was not originally under their jurisdiction. But there are cases where they will grant a bill of discovery and will not grant relief. And on this subject I have not been able to discern the principle on which the Ch. proceed, in sometimes refusing and sometimes allowing.

1. P. W. 406.
2. Atk. 537.
3. Br. Ch. 77.
3. Atk. 262.
1. Vern. 521.
2. Bro. P. C. 61.

Depositions in perpetuam rei memoriam.

[illegible] also applied to Ch. [illegible] to take depositions [illegible] in perpetuam rei memoriam [illegible] testimony.

[illegible] [illegible] [illegible] formerly [illegible] more than [illegible] [illegible] not [illegible]

Delivering up of the Evid. of Debt.

1. [illegible] 297.
2. Atk. [illegible]
1. Vern. 479

[illegible] relief [illegible] not [illegible] the delivering up [illegible] [illegible]

[illegible] 2 Bur. 502.
[illegible] 2 Str. 1.
Brown. 218.
3 Ch. R. 151.

Decreeing Partitions.

[illegible]

Mortgagees restrained against

[illegible]

[illegible]

Property &c.

When a thing is said to be the property of any person, we mean, generally speaking, that he has the sole power of disposing of it at his own pleasure, he might never be disturbed in the possession. His personal property consists in the household goods and other movables under his direction.

The property is said to be the right of a man to do what he pleases with it. [illegible] Property is sometimes given to the wife, and sometimes to the husband.

Property arises from the various powers by which it is acquired, or from the certain rules of particular relations of mankind, or from the immediate gift of the author of all things. Some of the [illegible] considered as [illegible]

his contract, & cannot [illegible] be considered under the power of the baron and feme.

All contracts entered into before marriage by husband and wife are ordinarily discharged by the marriage. But if the contract respects the marriage, and marriage was the consideration of the agreement it is not so. This is illustrated by the case of a bond given before marriage for the payment of money after the [illegible]. Therefore the bond was given for a settlement, to be afterwards made. If the bond were intended? it is not. The bond is a principle disposed, with as [illegible] in [illegible]. The only exception is Prec. Ch. 22. that a principle of law prevents the wife from 2. Ves. 157. suing her husband in a court of law. But a court 1. Vern. 198. 2. P. W. 243 & 2. Atk. 92. execute it, for they will suffer a woman to sue in equity in her own name her husband. Here, as after coverture, the bond commenced to be an agreement and therefore they will treat it as an agreement, and enforce it.

A wife may be a creditor [illegible] of her husband. 2. Vern. 482. 1. P. W. 264 3. P. W. 334.

Courts of Equity will take cognizance of articles of agreement entered into by a husband for a separate maintenance of the wife. Such contracts are entered into with trustees, for the said husband cannot contract with his wife

Power of Attorney.

This will comprehend a testamentary manner of the trust. The husband may convey his estate in this manner. But this will be considered as a contingent conveyance and if he had no creditors, this conveyance would be upheld in it.

Further, had if we must accompanying the idea, the husband may convey his property, and a trustee, to his use. That is no obstacle with in allowing him to convey real property, in consideration of the Eng. Ed. Statute which is incorporated by the respects in the constitution we by have found a way of making a second conveyance, and merely conveying to a trustee to the use of the wife, and then, in the Ed. the takes the property.

Performance of Contracts.

There are some contracts which cannot be performed and made void and others which may. The principle is this, if a contract is entered into by a person who has no power to make it valid or if a contract is made void on account of a fraud on third persons. The law will void it. But contracts which are made void merely on account of improper bargaining, merely the same reason would be imposed against them.

1 Hawkins Rom. N. 637.

[illegible]

[illegible] Prov. of Canada
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Prov. of Canada
[illegible]

[illegible]

Power of Arrest

322. And if the debtor, knowing of the arrest, pay the money to the officer, he cannot compel him

1 Ld Raym 882. 1 Salk 320. for it was a present.

2 Term 510. It has been held, that a creditor cannot have an action against a person who has caused an arrest, and an action will lie against the officer for false imprisonment, either upon the arrest or upon the detention of the debtor, notwithstanding the arrest.

Performance of Awards

Courts of Equity will secure the performance of an award, when there has been a submission and a decree

1 P. Wms 187 2 Vern 24. that the debts, or the rents, or other real property are conclusive on the parties to the award. But the facts, they will explore on appeal to perform an award which concerns real property merely; which is the award is explicit on it.

Punishment of Bankrupts

If one of the parties in trade refuses on a bankruptcy to be bound by the award, the commissioners, after the expiration of the time, may, at the request of the creditors, at the request of the bankrupt, compel the execution of the award, by imprisonment. If he refuses to execute the conveyance, he may be committed, and kept in prison until he shall execute it. The bankrupt is also entitled to his discharge. The expenses of the arbitration are paid out of the estate, and the bankrupt's fees, and of all other, the said debts have been satisfied.

[illegible]

[illegible] 1 Atk. 108. 1 Ver. 90.

[illegible]

[illegible] 2 Vern. 280. 1 P. Wms. 61. 261. 1 Br. Ch. 150. 2 P. Wms. 280. 2 Ver. 68 pl.

[illegible]

[illegible]

In ordinary cases Ch'y does not interfere in personal contracts. The principle is that an adequate remedy may be had at law. But only remove this principle and then will relieve as much in these cases as in any others. Suppose the contracting between A and B to deliver a quantity [illegible] for which money would be no adequate compensation, Ch'y will afford relief to the party who is injured. So also, Ch'y will decree an apportionment when one of the parties is a bankrupt.

3. Atk. 304
2. P. Wms. [illegible]
[illegible]
6. Ves. 456.

In many of the States there are statutes directing the mode of apportioning debts. In those States there is an adequate remedy at law and Ch'y [illegible] there is no need.

1 Ves. 84
[illegible]

I have already noticed that he who asks equity must do equity. It is not here meant that he must have already done it since it may be a matter of uncertainty, but he must always be willing to do it, when ascertained.

There is another rule [illegible] which I have not [illegible], which is that Ch'y will [illegible] in [illegible] the [illegible] of [illegible], then will not relieve Defendant, provided certain circumstances appear. As if on an account for the purchase of land, a bill [illegible] a person is filed and it appears that the title is questionable

2. P. Wms. [illegible]
2. Atk. [illegible]

Council of War, it was already well considered, some
exercised a particular care, lest spaces to con-
fell the expense to pay them. The exp[ense] con-
cerned as standing in the place of the Es-
tate, or to accrue, and as an actual debt to
the amount of their arrest. But he is rather
doubtful to pay a tax, but a trifle. Nor not
bring the action at law? For the Est. of Ann in Ind.
stopped, though the name was in Trust an
reason for it and right to be the power of
compelling the performance of it. - No action
in Engl. has ever been brought and tried in the
case. There have indeed been actions commenced
against the Service, on the received a occasion of bond
an action that he should pay a tax.

In court, the exec[utor] sued at law, for not
fulfilling his mind, and found an acceptable reason
at law.

Suppose an exp[ec]tant Exp. should promise
in writing to pay the debt of his testator, he is
bound to it in a Est. of law.

For analogy to the rule that what is added
to the alone is alone. But what is added
that what is changed the data, and turned into
cash, he to whom the assistance is paid is not
a trifle to a particular person, for no [illegible] is

provided may be will compell the sale, and then the property goes a different way from what it would if it continued real.

But if a man devises land to be sold for a particular purpose and then is a surplus left that surplus will go where the land would have gone as to the heir at law. For here the particular purpose is ascertained.

1 P. W. 522
2 P. W. 17.
3 P. W. 21
5 Ba. & Ad. 542
3 Ph. 254
1 Cath. 154

In case where land is devised to be sold if the rent is the person to call them his appointee of the will makes him trustee for this purpose also. But if it is not expressly pointed out as the person who is to call his appointee of the trust under the will does not make him trustee for this purpose. A power of sale may be appointed a trustee — and then the property is never quitted as yet.

In Grant the 87 appointed his power to devise the 87 to sell whether required in the instrument. But the 87 appointed has never trusted over, may the trustee have a power and then reason should be had to 87.

In Sup. the trustee brings the money into court who pays it out according to the decision. Before the expense is incurred by the 87 appointed. But suppose the trustee is not the executor he does not require him to account to the 87 appointee

and a Ch'y Lien, however, other a claim for the debt. It will must be recorded by the creditor and he will compel the trustee to pay the debt.

Courts of Chancy have also assumed the power of compelling the (trustee) Exec to give bonds, which in Eng he is not ordinarily obliged to do, being a person appointed by and in the confidence of the testator himself. Ch of Chancy will require this on the ground of his being a trustee for legatees & creditors, and when exists in his discretion.

Ch of law know nothing of Equities of Redemption. Ch of Ch'y in any compel a sale of an Equity of redemption for the payment of such debts, as real property is liable to. The mortgagee is considered as a mere trustee.

From this however an evil accrues to the mortgagee. He takes the mortgage as a security for his money, and means to recover it. If the mortgagor will not come forward to redeem what can the mortgagee do? He may now bring forward a petition for a foreclosure & Ch'y will decree a foreclosure within a reasonable time; and when that time is past, there is no per the Equity. But what is the effect of that foreclosure? Does it operate as a payment of the mortgagor has already paid 2/3 of the money borrowed, shall the mortgagee be allowed to recover back any thing - not a farthing.

But suppose the mortgagee, by an action on the adjudication, after have been disappointed by the mortgagor in payment. No. A recovery will be allowed; but that recovery gives the mortgagee and the foreclosure is no longer operative. Cases of this will come from a foreclosure; as when a large sum of money was to be collected and by some misfortune or accident the mortgagor was prevented. If this were true, that on a complete payment of the mortgage this could never be seen.

Suppose in Case A mortgages his farm month 20,000 for 5000 to B. A is also indebted to D. D may attach the mortgaged land and have it appraised & sold as in other cases, but it is still a mortgage in the hands of the creditor.

When one person has the equitable, and another the legal title, the equitable is to be the legal title in a court of law. If, before he has a right to force of the mortgagee, land has been mortgaged in the ordinary way. But if even after the mortgagee has the legal title, he is not in equity entitled to have it against the equitable. If he, after the establish of equitable title, has gotten it, I value this will interpose.

some time [illegible] had made a purchase made a [illegible] with the [illegible] price and [illegible] 2 Br. 400.
[illegible] proceeds it was held to be a point
sound policy to prevent the trustee and officer from
the application of his trust. In consequence of this
difficulty of opinion, that has been some con-
troversy in the decisions. [illegible] come
before [illegible] in case the contract appeared to
be a bona fide one he refused to interfere. But
the opinion has been in several instances
been overruled, and it is now considered that if
such purchases are opposed sound policy,
for the Ch cannot ascertain in every instance,
whether there was fraud or not. The cases
were, therefore, [illegible] of certain
trouble, either [illegible] or [illegible]
become an advantage to himself.
Suppose the trustee be willing to give more than
any bidder, it seems that in that case if the
fund is paid upon the Court by a bill, he will be
allowed by the Ch. Chancellor.
Why the opinion of a bankrupt [illegible] 6 Ves. 7.
produced a diversity of the decisions on this?
said Chancellor Kent, he [illegible] that his 6 Ves. 678.
opinion has [illegible] overruled by later cases.
How will the Court in this case if they have [illegible]
[illegible] a trustee has purchased of a stranger fund and
sold it to a bona fide purchaser. If it [illegible]

2 Br. Ch. 409. 10. Vern. 423.

Lord Nottingham said the bargain and the bond the case is, that Nicholas Cantell had taken an trustee for his money, to the cestui que trust. Now suppose the Defendant the purchaser of cestui que trust for 10,000 £ will compell him to pay the cestui que trust 10,000 £ the exact received above the same, said for the bond. Suppose lands the property remained unsold, with the equal beneficial title in the view of the trustee. Will will withdraw from him the installation bond, he compell him to give up the contract. But I will not be confined to be alone if it is necessary that the property should be sold for payment of debts or otherwise or lands and actions we have said before that the trustee has offered.

Further the method was proceed, and not an incumbrance made, nor permitted; said an

8 Ves. Jr. 324. 9 Sing. 100.

exception occasion of bonds, the cestui que trust entitled for the actual time of the undertakers or an order absolute. The Court will order it to him. Had a bad if the trustee has made an incumbrance? Will Chancery compell him to give up the contract? Yes; but he will reserve contribution to repay the purchase money, and the value of the improvement for it is a rule in Equity always to do justice between the parties.

Suppose a man desires to buy for 10,000 £ a farm worth 12,000 £ and marches it round after the bargain, and a trifle in the work, still he may purchase the benefit of redemption. And so also the purchaser may always purchase the equitable bond for a benefit to him. It is a trifle. These cases are exceptions to the general rule.

It is a maxim that property which a man leaves at his death must first be applied to the payment of his debts, in preference to any claims of mere volunteers. Suppose A dies and in his will makes B his exec^or, and leaves a debt of 500$ payable in five years to N. The executor pays the debts and other legacies and then distributes the residue. At the expiration of the 5 years the exec^or is a bankrupt. N. being a creditor may recover the amount from those volunteers who have received the personal property. Volunteers are always liable to creditors, but the Law knows nothing of an action ag^st anyone but the exec^r. But suppose the Ex^r is not a bankrupt and has paid all the assets to the cred^rs and volunteers without reserving any fund for the paym^t of N's debt, and to secure himself had taken a bond from the volunteers for a contribution to pay this debt when due. Can N. the creditor in this Court call on the legatees direct to collect his debt? No. Because he has an adequate remedy at law against the Executor, who has his remedy over on the bond. But suppose the Ex^or had paid over all the assets and had not taken any bonds: & then the credit^r recovers of him, can the Ex^or then have an action against the legatees. I have seen some decisions in favour of the Ex^or in one case where no bond was taken. But the rule is certainly otherwise, and entirely inconsistent with those principles of Equity on which Ex^rs are held responsible. This great penalty is inflicted on the Ex^r not for any fraud but merely for carelessness in not securing himself.

It is a rule in Equity that where property is devised to secure the payment of debts and of the rents & profits of the remainder not sufficient to pay the debts, the land must be sold, or so much of it, as will be sufficient that it is under the control of the Court of Chancery.

2 Scott 357. Vernon 216.

Upon this decision, it seems, the several persons, and among others, by a collateral bond, to be, in consequence, there is no need of supplies from France. But it happens that there is not property enough to pay the debts. And this bond be bended as such and have a preference to the other Natural bond creditors not be paid until all the other creditors are satisfied, there it must be. But suppose the exchequer in London is better than it is a collateral bond or not. It is an example in point in the case in the Exchequer and was the objection to have the question decided at their expense.

Pitt & Wilbraham vs Smith on point of jurisdiction which would have been in a common case. It is a bond and appeal bond, appointed the Exchequer; the commissioners do not seem to have power to set it. Suppose the commissioners would have it as a common bond on the ground of probate, suppose it be a mortgage bond then it should be paid after the rent. Commission in nature the Court of Probate, judging of appeal before it.

[illegible] exercised the power of [illegible] injunction.

[illegible] power [illegible] in [illegible] case relief from a grievous [illegible] could not be obtained at law, and [illegible] could be given. The jurisdiction [illegible] from proceedings at law [illegible] the rights from the decision [illegible] to be entirely [illegible].

In exercising the power of injunction in matters of account the opinion of [illegible] was that the action at law must be maintained after the account had been taken, for [illegible] upon the ground of the commission. The injunction did not [illegible] have been done because a person [illegible] the account at law is not accounted.

[illegible] Lord Eldon proceeded upon a principle unknown to the Scotch law. He said the [illegible] an action for mere assault against [illegible] the [illegible] of the [illegible] for [illegible] offence. The [illegible] of such an opinion. There is no doubt that [illegible] law as well as [illegible] will [illegible] an action for mere assault. But the Court of Chancery will also administer an injunction in such cases.

Lord [illegible] Paul after [illegible] of [illegible]

extended commonly the proceeding in a bona fide suit
2 Nov. 64 for the commission of lunacy, and Bilwell's case
1 Co. Rep. 96. 221. in another. This is a bona fide estate for life and
a bona fide, notwithstanding there has been no issue
of the marriage. For the court and the wardship
are never ousted but upon their interposition.

The two lunacies above claimed in the
instance of lunacy. The mortgagee in this
is in possession of the estate, for there was no
issue of the second marriage. But a bona fide of
Edward 4th will in some cases be here a case, as
of the mortgagee's lunacy, which is accounted in law the
mortgagor's. So also if the mortgagee is in posses-
sion and a bill brought by the mortgagor, he
will be held lunatic from the commission of lunacy.
But if the possession of the mortgagee is not after
5 Co. 94. this suppose they will not intitle.

Form. 2 H. 450. As to the action of waste does not lie against
37 H. 27. any one who has a barren estate tail or an estate
for life. If there be a remainder in fee or remainder
man or any other person, it runs upon estate tail
and the remainder man and the estate in
possession. This is a tortious act made and done
one more or less estate than. It is not in
time or the relation of the remote remainder man.

In case for life is always added for waste in
the reversioner this estate is created and in the

[illegible] to [illegible] [illegible] [illegible] "[illegible] [illegible] [illegible] [

1 Ch. R. 628. 3 Ch. R. 551. Cambr. 56. Injunctions are either temporary or perpetual. Where one is called an interlocutory decree, it is still filed in the Court, & found by the plaintiff. But well upon an interlocutory order will be perpetual, though very injudicious are unknown to the Court and bound.

5 Ver. 48. The Court of the Town under constitution with a Court of Law and Equity. The form of proceeding therefore in equity are in imitation of the Court of Chancery or Court of Equity. This issue an injunction against the Mayor or a Corporation.

2 Vern. 410. Pawlet v. Prof. (1724) 1 Ch. 1. Court of Equity will also then an injunction to restrain a tenant in a fraudulent disposition of £100 value. This would be serious in principle.

From any person on an tenant appointed in Court of Equity in injunction appointed. He recently obtained by others, of the owners of an tenant who would have to have to their collection the arrears of their labor.

7 Mun. 241. It was that every man should be protected the mortgage of his own labor & then expressly upon hay, Pounds in Pocket then in the town of Salem. Inquire have in Court of Salem. The rule is reversed to Pain Injunction. The contract is well examined in the English order in the case cited from Burrow. It seems that the argument of Parke who was in the minority are conclusive though the mortgaging would insure in the other side.

[illegible] of the case [illegible] the [illegible] rule of 12 of the [illegible] were [illegible]. But the [illegible] majority in his [illegible] [illegible], but [illegible] 12 were of opinion that the Com. [illegible] [illegible] with [illegible] while the [illegible] correctly [illegible] remedy only.

The English C[illegible] also [illegible] the same [illegible] injunctions in cases of [illegible] where 1 Jr. [illegible] 1 Ja. R. 220. 1 P. W. 671. the right has been [illegible] times twice in the Court of Law. For according to the principles on which [illegible] action is [illegible] the controversy would otherwise be interminable. But [illegible] action in [illegible] is not brought on a fiction but on a real title in the [illegible].

It has been said that [illegible] will not grant injunction in any criminal case. But this proposition is too broad. Suppose A is prosecuted 2 Atk. 302. 2 Br. 64. by a public officer for erecting a [illegible] which subjects the offender to a penalty. Ch[illegible] will enjoin the prosecution until the question of the right is determined in the civil action between the parties. If no action has been brought [illegible] [illegible] no injunction will issue unless [illegible] [illegible] an action shall be commenced.

This power of issuing an injunction [illegible] are extended over all [illegible] Courts and in this country the same power exists, though in some cases it is unnecessary to exercise it, as in the case of [illegible] courts of probate, from whose judgment an appeal may always be taken.

Criminal Law.

Introductory Lecture

A crime is said to be an act committed or omitted in violation of a public law either forbidding or commanding it.

Crimes may be either against the common law or against a statute.

A misdemeanour in common parlance means a small offence, but when used by law writers it is understood to be synonymous with felony, and yet it is not particularly accurate as a crime by any law, as an attempt to commit murder be. It is here an attempt to commit a crime which has a name.

Sometimes certain acts are prohibited by statutes which are have affixed no punishment to the commission. Acts of this kind are treated as misdemeanours, as for ex: the joining of persons in marriage by any other than such as are authorized by the statute.

Most crimes include a private wrong as well as an injury to the public. And by the English law in some cases there is a recovery for this wrong. The private injury is said to be merged in the public one.

But where the public offence is other & heavier an action may also be brought to recover pecuniary damages.

By felony is meant a crime for which a Man before accused of the goods and chattels of the offender, and in the Eng. Law this is equivalent with death unless the benefit of Clergy is allowed by statute. But in this country the doctrine of benefit of clergy is not exist. The ground of the Eng. law is that an civil action would be impertinent, since the goods and chattels are forfeited. But here this is not the case. The reason of the rule therefore ceases. In Engl. where the goods and chattels would go to the Lord in Scotland there is no such.

Crimes are of two sorts 1. those which are mala in se. 2. those which are merely mala prohibita. The former are such as would be crimes "in a state of Nature". But there are undoubtedly crimes which we consider as mala in se, which yet prove only a state of society, as burglary & incest. Crimes of these kinds which are considered mala prohibita in each land state of this state.

2. Crimes which are punished by a pecuniary fine are those only which are made offences by statute only.

The former class of crimes are said to be immoral; and the latter to be founded on the civil rights and of the individuals which the entire world doubts. But I have no doubt, both in his opinion.

The Grand Object of our Criminal Law is not reformation — but to deter others from similar offences: though in many cases the former is no inconsiderable object.

Some crimes are punished by forfeiture and others by statute: and sometimes offenses which are deemed at Common law, are punished by statute. In those cases the statute law is either a cumulative punishment, and the Common law punishment is taken away by the statute. The prosecution may be either at Common law or on the statute, and the Government will indicate accordingly.

If the indictment is on the statute, and varied in the statute, it is a good indictment at Common law. But the principle is applicable to direct violations of the Common law and statute both punished a remedy.

If the action are the Common law, in some cases the sufficient under the statute, the action may still be maintained at Common law, it is a matter of discretion with the Common law.

Criminal Law.

Thus

If the statute punishes the crime more severely than the common law, the statute is regarded and no indictment can be maintained except upon the statute.

Who are exempted from punishment?

In order to constitute a crime there must be a wrong intention; and if it is a crime at common law there must be an act done, in consequence with the will. Whenever there is a mere accidental act, there can be no offence.

Whenever there is an intent wrongful, or when the act is done by accident there is no concurrence of the will, no crime is given committed.

And even if there is a concurrence of the will yet if there is such a want of understanding that the will cannot be controlled by the understanding, no crime, hence in another the act does not be criminal.

If there is merely a wrongful will, unaccompanied with an act, the law imposes no punishment.

There are some cases in which a want of understanding is immaterial. This is true in regard to the act of minors. In cases under 14, and under 7 there is prima facie a presumption that they are responsible.

under that head over, the consequence
fall then inevitable. For they never then are pun-
ishable. For then are insane, & there is no
place of law, that they have no malice, and the
reason, their crime cannot be rebutted. The knowledge
is not in an a there cases abscondered. For then
is understanding, the infant is punishable.

Idiots are most innocent, for they are
independent in malice.

Madmen, also as those who are born fatuous
distracted, are most punishable. Deed a man can
be distracted as to know things and yet lack
rational action. Then he may be liable to
punishment. Though however in all these cases
must be left to the discretion of the judge. For
they could be under restraint for the
most time in prison.

There is one well grounded other cause
power of their consciousness, and still pun-
ishable of folly, punishable, be accounted
guilty while in their intoxication. Drunkenness
is the cause of intoxication which the law can
excuse all an excuse, for a crime. The
reason is not that the man may, the punish-
ment an injustice, for not be by other injus-
tice drunkenness excuse a man, and then

committed a crime he merely ought to excuse him. So also, if the man same means he had occasioned an illegal act which frequently happens, being an act required of them by law, he would not be punishable for the neglect. It is an principle of policy and law that a person is not allowed to an excuse.

If one person goes into the house of another with intent to commit a felony, and in so doing accidentally kills a man, he is then not guilty of a crime. But if he had entered the house to have his mistress house which is an unlawful act, and in doing that he killed a man, he would be guilty of a crime. The principle of policy in that case, punishes the man, though he meant not to commit the act.

If the act is unlawful which a person is committing he is punishable for the consequences though they are unknown to him and unintended.

If an act is done by a mistake in fact? then is no crime; as if a man without intent kills a bystander, thinking of his own family.

But ignorance of the law, even if it is a

positive reputation will not be made out.

When a law is once established, the protection of it is what every one is acquainted with. If a man thinks the punishment too severe, which it certainly is, he is still commendable of holding his opinion.

In a court of common law, the person committing an unlawful act is an offender. If inquiry is established by law, and it is the law which will make a man an offender, tho' in fact committing, he is guilty.

If a person is ~~committed~~ accused for a person to commit a crime which is punishable by the laws of society, he is not an offender. There is but one commutation 1 Vict. Part of Prisoners and Pirate, which will excuse an unlawful act. If a man commit an offence in the service of his Master or in his company, which is supposed to be done by his consent. If this act without his consent and contrary to his orders, which is liable. If then he is hurted, the man is innocent.

There is one class of cases founded on high treason act which are exceptions. As when one invading another comes into the country for the purpose. Let when a act is made under contribution, the man lipal-

say, he was accessory. If a person
[illegible] in the commission of the same felony
he is exposed for the act.

It has been a question among lawyers whether stealing goods in a manger is criminal. The law does not extend so far as this expression, though in an opinion of a learned judge in Dalton's Justice, it is said to be a crime in some circumstances.

Principals and Accessories.

A principal is the actual perpetrator. An act done is evidence has either commanded and abetted the principal in the perpetration of the act; or given him assistance after the commission of the offence. In the former case he is an accessory before the fact, in the latter an accessory after the fact.

All who are present are principals, and all who are principals.

Hale. P.C. 615 — What is meant by being present? It is not necessary that the person be present on the spot. If one man on a Hill or a mountain watch another commit a robbery, he only is the accessory.

Foster 350

There are crimes which cannot be committed without the presence of any body but the person who [illegible] the position or constitute the person principal, these he is not present.

But where presence is necessary, it is sufficient that the person be under aiding and abetting at the time.

An accessory before the fact is one who procures, commands or commands another to do an act which is criminal. He is in a manner in a third way. He aids, procures, or commands; whether by persuasion or command. But he may not be an accessory to all that happens to be done, in each particular case. But if he advises the act in a certain way, from which an unforeseen and unexpected act arises, still he is an accessory to them.

Hale 615. 617.

But if the consequences are not flowing from the act advised, or commanded then it is not an accessory.

Accessory after the fact. No person is at liberty to aid or assist a person who has committed a crime, so that he may escape from justice. And the person assisting is an Accessory after the fact. But the harboring of a criminal in prison, with food, does not make an accessory; for this does not enable him to escape from justice.

2 Hawk. P.C. Chap. 29. Sec. 1.

The crime must be complete, to constitute one an accessory after the fact. If commit a misdemeanor and

Principal and accessory.

or 1st, must be done his accessory is a principal in the same degree, and marks them as accomplices, they should be punished as principals. There is one exception

2. Dam. 88. Salmon which will warrant this, a wife may receive her husband, or give him meat by aiding and assisting her husband, and not become an accessory after the fact.

Felons and Felony. A second degree accessories; all who are engaged in them are principals.

Some crimes from their nature can have no accessories before the fact, as manslaughter. They may have accessories after the fact.

1 Hawk. Pleas. accessories are punished as principals; tho' now by statute the punishment is reformed. The distinction between principal and accessory has been very useful, that the second might always know the precise offence which he had to answer to. Besides, the accessory can never be tried until after the principal is convicted. So also the criminal is injured if in another view, for a person who is acquitted as one in which he is principal may still be indicted as accessory.

2 Hawk. 1 Bac. 1 Hale 620.

The practice of particular offences, I shall mention the common law, and the alterations made by statute. When there is not stat. the common law prevails. Our stat. have varied the punishment but the offences common remain the same.

All those crimes which are called felony in Engl. are also so called in this country. But that is not

makes a crime felony, does not have exibit or have any forfeiture of goods and chattels. For Ex. 1st the Com. Law attainder is made retrospective, so that a man's felony the benefit of clergy is now allowed, for the first offence. This extends to attainder of felony at Com. Law, must be taken advantage of.

Arson

Arson is an offence at Com. Law, and is defined to be the wilful and malicious burning of the house of another. The word "wilful" excludes all cases of mistake. Every thing is malicious in law which has proceeded from a wicked mind, tho' there be no ill will to the person. This is true in all cases. Person is the burning of the house of another; it does not constitute this crime tho' he set to burn his own house. 1 Hawk. 155

The house should must be a dwelling. But this is so if it be a mansion house, but if the man lives in it occasionally, it is not in the curtilage of the mansion house is arson. But if a man wilfully set fire to an outhouse, so that an adjoining building is destroyed, it is Arson. 4 B. 20. 4 Mar. 221. 1 Hawk. 166.

Burning of his own house. He burns his own house: this is not at Com. Law, if another house is also burnt in consequence of it. But if a man burns his own house with the intent of burning the house of another, it constitutes the crime, tho' he burns only his house. But if his neighbour's house is contiguous, the an- Co. L. 377. 1 Hawk. 164

Arson.

and malice is presumed. But if it be done in haste, and accidentally burnt, it is not arson.

So if Arson, for the [illegible] of a house to burn it, Burton [illegible] Hawkins. point then one has opening an window, & [illegible] it; for tho' the fire be in the upper, the lower house [illegible] to it, covering the house, and an old and this unavoidable to be burnt and.

Constitutes this offence, it is not material that the house be destroyed, it is burnt adjoining, or to burning. It has been held that if it intend to burn the house, set fire by mistake to it, it is not Arson: but it clearly is.

The offence is punishable capitally, at Common Law.

By our Statute law, the Common law punishment still remains, if life is absolutely endangered by the burning. But if otherwise, the punishment is Imprisonment in Newgate.

I need think it possible to derive an adequate idea of the crime from any definition in the books.

Homicide is sometimes murder, sometimes manslaughter, and other times neither and yet it is justifiable.

To constitute it murder there must be malice; by which is meant wrongfulness as distinguished from unwillingness. Did he act knowingly, intentionally and wilfully, with deliberation and premeditation? Revenge, envy, hatred, or other malice, and yet only the merits of a manslaughter, but premeditated malice with and without intent, intentional, accidental or murder.

Wounds, poisons, blows or ill-treatment, if such as are usually followed by the avoid mortality — are abandoned, unnatural hazard, which cares not whether the death of another is the consequence of his act or not. Strangling in some shape or other, away life, in the indulgence of such a act, fornication, it is murder.

There are some cases where from age, infirmity or weakness, when the matter cannot be made so plain.

Manslaughter is of two kinds. 1. Involuntary manslaughter, which is the killing, unintentionally of another in some violent manner

provocation. It is never remembered when there is evidence of premeditation or when passion has had time to cool. But if the provocation is one which would be considered as a justifying or extenuating circumstance, it will be pleaded in mitigation. The act, then, shows the malicious, unprovoked disposition. It is not material whether the prisoner in fact killed the deceased or caused his death by poison.

4th. Revolution, mentioned in the act, is that which arises in consequence of the performance of some unlawful act, or of the performance of some lawful act in a careless, negligent manner. It is a term in the criminal code, which must be taken from a precedent and well understood.

Premeditation must be premeditated. This man is of the first. The premeditation must be evidence that the act was committed with malice aforethought. Malice aforethought is defined as the state of a man's mind when he acts from a wicked or depraved disposition of heart. 1. Excusable homicide is defined as follows: if in a general affray or of the fourth, homicide done when there is a wicked or depraved disposition in his own defence. 2. If the person killed occasioned the death himself by an act done with a malicious design. Fourth

and he exceeded. [illegible]
[illegible] of [illegible] [illegible]
[illegible] of [illegible] [illegible] [illegible]
upon [illegible] [illegible] [illegible]
[illegible] the second kind of [illegible] homicide
where there was no [illegible] to kill but
only from some misadventure accompanied with a small degree of some [illegible]
death ensues. As if an axe flies off its helve
and kills a bystander.

Fortifaith homicide is occasioned either
by the same or the same actions under
authority for the advancement of justice
kill an attacker. And, apprehending from what
we find in other writers it will also save
those cases of death which result merely
from accident accompanied with no
culpable authority.

So if the sheriff officer in execution arrests
a debtor whom he has taken there under
an appearance and lets go the debtor

Thus killing a child in a tournament
who had been concealed under the lady while
fitching hay to his cattle. In this case an
innocent person was no accidentally killed. Neither would
it be in case should a battlement which had not
been accustomed to do so, fly off from the
[illegible] and kill a bystander

A man with an intent to shoot an other through
the heart accidentally killed an other. He
had no intention to do injury to any man
and accidentally killed a man. The principle of law on this subject has no foundation in equity. It is said if the death ensue in consequence of an attempt to commit a felony, it is murder. If, in consequence of an attempt to commit a trespass, it is manslaughter. Mr. Adams
said in the first case the malice was sufficient to constitute murder and said in this case the malice would not be considered. The overruling principle seems to be that it is a felony.

If death results from the exercise of an innocent amusement, it is certainly neither murder nor manslaughter. Indeed there was a fair conducted according to the rules of the sport. If there was no fair, no wrong. A would be manslaughter.

A person meets another and with a blow from a large club brings him to the ground and death ensues. The language not here has an intention of killing. Still he has exhibited one unconscionable wicked intent to cut him off from society.

A person a blow and 10 minutes intervene to kill him and under circumstances which

where the bare killing would make it manslaughter; it would be murder if he meant to B, and causes the death of C. So if poison was laid for one person and taken by another.

But suppose in the former case, from the circumstances the killing of B would have been only manslaughter, yet the killing of C manslaughter or murder. It is settled to be manslaughter. The malice aforethought and undoubtedly would be more proved by the death of C, than if B, had actually been killed.

Achilles marches his cohort on with a proper weapon, for a proper cause, and in a proper manner. But some unlucky blow occasions his death. Recently had a right to judge of the propriety of running? He exceeded.

But had he used an improper weapon as a bar of iron, this would be considered as evidence of the malicious animus. And this is allowing the effect of sequency.

So if a man drives unawares to pass neighbors cattle. Farmer turns, finds lame and unadvisedly kills some one who was rapidly — this would be excusable. But the one no matter, and explanation may perhaps

and he without any regard throws down the timber &c – this would evidence the unjustifiable regard and is murder.

But the same principle it has been determined that the turning and of a mad bull, by which an attempt would be rescued, & discovers the malice aforethought the unjustifiable regard.

So if an man throws a object in a crowded place where was likely to cause accidents, it would be murder.

A man who was incited and to assist took with him his own to Crowd, & Foster. Cr. Law having discovered the charge, had it up – and afterwards in consequence of some other person's bad pipe it again killed his wife. Would this be murder upon. I apprehend not – on principle – and so it was determined.

It is said by Lord Coke, that the execution of a man, by an officer in consequence of the order of a JP, who had no jurisdiction, would be ~~[illegible]~~ murder. But I apprehend this would not be so considered. The malice aforethought is wanting.

Neither, see Lord Hawkins & other authorities where the Sheriff changes the punishment from hanging to beheading.

A man formerly in Portland, in the state of Maine, was accused of a crime, escaped from confinement, and killed another person who was assisting in apprehending the accused, during two days. And it was determined that he had acted in self-defence and was guilty only of excusable homicide.

If an officer kills a man whom he is attempting to arrest, he is excused provided the man appeared to resist for the arrest. It is said that if a man attempts to escape, who has been guilty of felony & killed an officer, it is an excusable homicide, but that if he has not been guilty of felony, it is manslaughter. But the contrary seems to be more agreeable to reason. The officer would in some case be justified in shooting a felon who should attempt to escape to take a person who is out of his reach. It is not certain that every one who is charged with felony is guilty of it. The distinction between felony & misdemeanor here, we do not approve of.

Homicide excusable is defined to be such on the principle of self-defence. Of this there are two kinds. In one case the person assaulted must first retreat. In other, he need not.

He ought always in the first case to retreat, until he is in danger of being killed or badly injured himself.

A person who is assaulted by a robber is not obliged to retreat at all.

When two persons are engaged in a general affray under such circumstances that retreat is impossible, killing of the aforesaid would be justifiable. Suppose from misunderstanding in this, that here the parties are not actually quarrelling at the time, but the stranger has endeavored to avoid the contention.

Even if the person who begun the affray finds himself in an inferior manner and after retreating as far as possible, kills his adversary this will be excusable.

If however, this is done with a premeditated design to take away another life under such circumstances it will be murder.

Manslaughter will now be considered by itself. Its two kinds, of voluntary and involuntary have already been noticed.

When a man is killed, the presumption always is, that it is murder. And the defendant then shows such circumstances as will make it appear, on account of the intention of human nature to mean something other.

No no matter how much the provocation was, if there has been time to cool.

The question is not whether the name was in a passion or not. There must have been a provocation sufficient to excite the passion. Otherwise, so far from being an excuse, the passion would be an aggravation of the offence.

No words, gestures, or any other actions expressive of contempt will be sufficient to reduce the crime to manslaughter, when there was an intention of killing. This is a mistaken notion. For there may be a case where in consequence of a provocation arising from words or acts from which death ensues may if only a moderate anticipation was intended constitute manslaughter only.

A boy was accosted by a Parker & took his stick wood. The parker tied the boy to his horse's tail and dragged him. He was killed and it was holden to be murder.

A man, whose son had been beaten by another boy pursued him, ~~and~~ quarter of a mile, and killed him. It was held on to be manslaughter. This decision has been questioned. But in view of the Respondent the weapon is said not to have been a sword but a whip and this may account for it.

If a person who is attacked by another kills him, this would be a justifiable homicide, and would open the offence.

So if a person who is beating the son of another is killed by him, it would be only manslaughter.

So if a man who is found in bed with the wife of another is so instantly killed by the injured husband, the circumstances would extenuate the offence.

There are likewise some artificial constructive murders where the principle of malice seems to be laid aside.

The case of a duel may in certain cases come under this head: as where a person who is challenged, feeling unable to bear the reproaches of cowardice, accepts of it and kills his adversary: policy treats it as murder, tho' clergy then was no matter of course.

Resistance to officers, from which the death of the officer ensues, is made murder, tho' the object of resistance was not the death of the officer but merely to escape. These must be considered as exploded cases which do not infringe the general principle.

The punishment of murder is death. The punishment of manslaughter by the common law is fine and imprisonment and branding together with a forfeiture of goods and chattels.

Our Statute makes no distinction between voluntary and involuntary manslaughter. The latter is punishable by fine only.

A curious question has arisen under our Statute. A man is indicted for manslaughter, if he is indicted under the Statute, the punishment is prescribed. But suppose he is indicted for murder, and found guilty of manslaughter, is it manslaughter at Com. Law, or manslaughter under our Statute. There is a distinction in the punishment and how are the Cts to pick it. To my mind it is clear that the Cts in that case ought to affix the punishment of involuntary manslaughter; for they cannot know what that punishment will be to prevent. I suppose the Cts adopted inadvertently a contrary rule. But I should not never hesitate to resort to principle.

The construction of policy in making it murder to kill an officer by resistance to an arrest does not apply to private persons, merely ordered by an officer.

Bonds for keeping the peace &c

It is very common for the Clerk of the Peace to require persons for offences to find them sureties and recognizance, where discretion is not made part of the punishment.

These are often cases in which persons may be bound over to keep the peace, & the commission, of course, refuse.

Thus inexperienced magistrates and officers, and a person to keep the peace who in his presence or shall be witness of a breach of the peace, or of making threats which will probably lead to a breach of the peace.

But in other cases it would be more convenient and proper. This process is very seldom used, for the information is general by swearing and the other summoned for the offence.

It is most frequently made use of by persons whose fears of personal violence are excited by the threats of another who may perhaps not be found guilty to keep the peace. The complainant is sworn under oath and the magistrate is authorized to issue a warrant. Proceeding not so strongly as the case that a person of strong nerves would be afraid. It is sufficient if the threats be such as would intimidate a person of ordinary resolution.

A husband is sometimes bound over for the protection of his wife threatened or assaulted with. And she is allowed to testify against him.

the common law [illegible]

Then binding for good behaviour, which extends to all punishable offences, enumerated in our amended statute: By this the legislature intended to reach all possible cases — & the Cts frequently make it a part of the punishment. The words of our statute are very migutar — persons of ill fame, [illegible] [illegible] such as keep awake in the night & rob and sleep in the day &c &c

Under this statute it has been determined that notwithstanding by the common law persons committing a breach of the peace may be bound to keep the peace, they never were considered to be bound over for good behaviour.

Under the act to suppress secret societies in Connecticut, many persons came into this state to [illegible] [illegible] and a number of them were arrested and bound over as "[illegible]"

The person must find bonds or be committed to prison. These bonds when once forfeited can never be discharged. So that there is a strong inducement for the person bound over to behave well, lest he should embroil his bondsman.

If no time is limited for the execution of the bond, the mag & county Cts are vested with power to discharge the bond on its being [illegible] up by the principal.

Provided the party complaining is willing to
accountable here, the Court will relieve him
the hand is adequate accordingly as the nature of
the offence

This recognizance is always forfeited, by any
breach of the peace, whether towards the complainant
or any other person. But a mere breach
thereof should subject it to a forfeiture, it would
not be a breach of the bond.

Various as regards the accumulation, it
has been decided, it ought probably be course
it is not punished. But under an old statute
in this State, he who slanders another is liable
to a fine. Perhaps a question equitable
arise out of this. But as it has been decided
that a bond, the made payable by statute
is no forfeiture of the bond, I suppose this
would follow the same rule.

The Courts have power, to attach a person
who behaves unbecomingly in their presence
and commit them to prison. This is incident
to all Courts. The commitment is made for this
special purpose, that the Court may go on with its
proceedings. Of course his commitment would be
upon with the domain of the Court.

But this is totally distinct from a commitment
upon an interlocutory order of Court. Then the con-

will be forgiven, unless the person comply with the order. For the object of commitment here is to ensure compliance.

When cannot now be complied with, and the time is past, the attachment is for a limited time. In these cases there can be no bail.

Gaolers and Sheriffs may be liable to an attachment in cases where other persons would not be. As if a gaoler should arrest his prisoner. He being an officer of the Ct. would be liable as for a contempt, besides being liable as a private person.

So would an attorney be liable for contempt, if guilty of such improper practice. For he is an officer of the Ct. and his misconduct would have a tendency to bring the Ct. into contempt.

So a juror may be committed for refusing to appear, or to receive the oath.

And a witness who should refuse to be sworn would in like manner be committed.

This extends to all cases where there is a rule of Ct. tho' the misconduct may not be in the presence of the Ct. as a misconstruction with an opinion on which a rule of Ct. has been made, to submit and comply without an award of ordinary attachment.

If the Prisoner became insane after the commitment the person could make application for commitment.

The CB do not make any warrant to commit, at all. R. D. order the officer to take that man to prison. But the law may require a mittimus.

Burglary.

This is the breaking and entering into a mansion house in the night season with an intention of committing a felony, all one of those crimes which a Roman Jury adjudged to be offences to a capital punishment whether it be so here or not.

1. There must be a breaking in the night season. If the act is committed when from the hour of the day there is sufficient light to distinguish it a mere place without, it is not burglary. It is not necessary that the commission be in. 7 Co. 64 Moor. 660 1 Hawk. 160. Cr. El. 885. 9 Co. 66.

2. The house must be a mansion house, dwelled in by some one. 1 Hawk. 162. "Dwelled in" to this acceptation "or a church." "Both are, the Church is the mansion house of God." It is undoubted a place where the crime may be committed. I have never inclined to regard a mansion house. But if it is something included burglary may be committed in it even though it is not then included. Burglary cannot be com-

in fact no dwelling house which are not within the curtilage of the mansion house. The buildings which are near, in and adjoining to the house are considered as a part of it.

It is not a dwelling house to break a store house considered as lumber.

The house attached mentioned in the indictment, and owner and occupier are thus alleged. It has been held under this stat. that the breaking open of a Chamber door, or school house, the cousin of a master, even at least included within the operation of this statute.

If a person compound lodged in a tenement, it would be considered as a mansion at Common Law. There must be a breaking. This is not merely a legal quibble which is frequently said of it, but when there is an actual violence. There must be an actual breaking. The house must be fastened. It is sufficient if the door be shut. But if the place be one which from necessity cannot be closed as a chimney, an entrance there would still be burglary.

Although a man stand on the threshold

4 Co. 40 Hawk. P.C. 275. 2 East P.C. 487

Russell on Cr. & Mis. 225.

an actual breaking by himself, and if he obtains an entrance by fraudulent trick, it shall have the same operation as if a man knocks and the door is the night and thus obtaining admission, enters in to commit a felony. This is the operation of fraud in all cases.

A house must be an entry. It is not necessary that one should say that the entry is, if an is any the house the offence is committed. It is a sufficient entry if the man creates in another instrument or fired in his arm to rob the house.

There a man went to a house in the night season with a felonious intent and barely unlocked the door and then escaped, this was holden to be an entry, because the key passed through the door and this is considered as been. So, where a man put a pistol into the window and demanded the money of a person in the room, it was determined to be burglary.

Thelyw. 111.

All persons concerned are burglars as well as the person who breaks, as confederates who are watching. So if a person without, opens the door and lets the other in still it is burglary in him.

Ch. 884

Burglary.

Cro. Car. 83 Cro. Eliz. 491. Dyer 61.

There must be an intent to commit a felony. Where a person came in to a house not to commit a felony but to beat a woman, it was held not to be a burglary. Where the breaking and entering is proved the presumption of law is that the person came with an intent to commit a felony. This throws the onus probandi upon the deft.

The prescription of time taken by the common law is obsolete in regard to the 24 Hrs. Statute in Connecticut is inapplicable in New York.

Perjury.

This is a false swearing wilfully in a point material in the cause, this a person under oath relative to some proceeding in a Court of Justice. The oath must be administered by a person authorised to administer it.

1. It must be wilfully. If the false swear in appears to have arrived in mistake or compulsion still it will not be perjury.

5 Mod. 350.
10. Mod. 195.
Salk. 515.
1 Hawk. 519.

2. It must be false. By this it is not meant that it should necessarily be false in fact. It may mean a swearing falsely, even tho' the fact may be true, as if a man swear a person guilty to a fact, which he knows nothing about. It has been said that this must be positive and that the swearing in a doubting way to avoid recollection is not perjury. But this is not true.

Salm. 292
3. Mod. 292.
1 Hawk. 322.

3. It must be in a point material. Suppose then a man under oath should swear falsely in a point not material? It is sufficient for the Commission of a crime in either of the first cases. Some may insist that to swear falsely in such a case, but if there was no object and all it would not be perjury. It is not and all necessary

Co. El. 509. That the words should have any tendency
1 Salk. 314.
Salk. 406.
Salm. 382.
1 Hawk. 324. to prove the fact, if they have a tendency
to prove it, is a point for the court.

It is not necessary that the words should be so materially
4th Rep. 54 b
Cro. 589. true the case, if they convince to prove it
is an element to constitute perjury.

It must be relative to some proceeding
in a Ct. of Justice. It is not necessary
that the oath be taken in a Ct. of Justice.
1 Hawk. 310 ing under a commission, if the commissioners
are considered as a Court.

According to the first certificate it was not
of any Court, the Ct. should be of Record.

The oath of a private nature cannot
be the foundation of perjury, though false.
2 Co. El. 168
937
185
609. But a false oath is perjury. It does not relate to any
proceeding in Ct.

It must be administered by a person
authorized to administer an oath. Has an
arbitrator authority to administer an
oath? When they be in a quasi judicial
capacity it must be so; in other cases though
arbitrators are a Ct., false swearing before
them, will not be perjury.

There has been a great question, whether
false swearing where the Ct. had no juris-

of the statute was perjury. It is decided that it is.

1841.

The jury should be instructed to disregard any the accused party of perjury was a witness.

This offence was once punished by the common law, with death. But it is now no more. The principle of punishment is according to the extent of the injury to society. The punishment resorted to, imprisonment, pillory, and the disqualification of the party with a perpetual disability of being a witness.

Our statute seems to be in affirmance of the common law. It not only punishes the main and the subornation of the party, but gives to the party a remedy in damages. A question has arisen whether the person injured can recover the whole damage which he has sustained, after recovering what the statute has allowed him. But the statute is affirmative. I have no idea that the legislature can make any law which shall compel an injured person in such case to take up with so little as the statute has allowed to be entitled to. If the party is willing to accept it as an indemnity it will be so. But I think he may have the sum allowed in the public prosecution.

Subornation of Perjury

This crime is committed by the act of inducing another to swear falsely and the subject the offender to the same punishment as Perjury.

Forgery

1 Hawk. 258. This and concerning this is the making or altering of any record or authentic matter of a public nature or any deed or writ with an intention to prevent equity & justice.

1 Matters of record comprehend judgments of Ct and legislative acts. 2. Other records are considered as matters of a public nature merely as registers of conveyance, &c. 3 Wills is all private written wills as well as real & Will. of any other

Co. 8. 296. instrument is forged it is stand forgery and
1 Hal. 66. Com. Law; and all these must be done to prevent fraud and injustice.

The Statutes of the various states have altered the commonlaw in many respects.

Hawk. 65. A bill to B in a decay, & this bill to C
Bacon. 396. 259. and authenticate the second & C to have that title.
This is forgery the authenticating the second.

[illegible]

[illegible] 30 Nov. 60.

[illegible] 8 Mar 1862.

[illegible]

Forgery.

It has always been holden that the insertion of the signature in a document was forgery. But it has been a great question whether the omission of a day intended to be given by the testator and the inducing of him to sign it with the supposition that it was included, is forgery. On this question there are various opinions. It has been contended that the words introduced making a sufficient description that intention was a forgery. And I think there is a great deal of reason in the argument.

No matter, I more expound with no fraudulent intention can constitute the crime of forgery, though they may have a tendency to do mischief; as the writing of a false letter over a blank signature. So the writing of a note ~~over a~~ signature in blank, for more money, if that can be proved is not forgery because the latter is produced of fraud is wanting.

The criminal knowledge of the common law, fair, intelligent, has accused the England the punishment now is death. In Scotland the punishment is imprisonment for life.

The two offences of larceny and robbery are called compound larceny, and differ from the simple offence.

Simple larceny is in common language is theft. This is usually divided into petit larceny and grand larceny.

Formerly petit larceny or common theft was not punished with death. This was the stealing of goods under the value of 12d, which then was worth as much as 5s now. Hence the Jurors used to find a mere administering in order of the article stolen, & thereby the criminal escaped. This distinction now I believe does away in all the states.

Grand larceny is the stealing of articles above that value and is still a capital offence, the punishment of death, with the exception of Maine.

Theft includes them both, and is defined to be the felonious taking and carrying away of the personal goods of another with intent to deprive the owner of his property. The property is taken from

The person is guilty of robbery. If from the house or the outhouse is guilty of burglary.

The taking must be fraudulently i.e. animo furandi. If a servant with no intent to steal takes his master's horse and rides off this is no theft. Suppose a person takes a horse and rides away, and then turns him back. This shows that he did not take him animo furandi. The gen animo must be strongly be inquired into.

So if a man takes his neighbours plough use it may be a trespass, but no theft.

So if one takes property under a claim and if this claim is made for the purpose it is no theft.

Suppose a person hires a horse and afterwards determines to run off with him and does. This is not theft. But if he had made use of this trick, with an original intention of stealing the horse, the fraud will not exculpate him.

The principle is that every felony must include a trespass i.e. a taking from the possession of the owner.

There are a number of cases in Southern Law Reports on the subject of these constitutive felonies. Two strangers had accosted the countryman said on his way home of business, and while they were walking with him — one of them picked up a diamond ring, and said this was "so much." After some conversation, not being able to sell it immediately they proposed to the countryman to pay them their shares and take the diamond, which turned out to be of no value. It was holden to be theft.

So where a man entered into a foreign store and requested to have a number of pairs of clock weights sent to his lodgings which he never off with, it was holden to be theft. These are clear cases on principle.

But there are cases of doubtful character in certain transactions which seem to turn out as where a stranger sold to a tailor, and found is subpoenaed — or a valuable bill taken from your room by the waiter. These have been holden not to be theft. No fraud was made use of to obtain the property. There is a distinction between this

same and the land. In the same of hiring a house the contract is altogether the side of the hirer. Tenants before the
1 Ld. 254. will have a lien on the property for
Papl. 24. their pay, id. is theft.
Moor 246.
Helps 35.
2 Hawk. 130.
1 Rol. 93.

When no special property at all is vested in the persons with whom your contract he means to deal of the B. as a shepherd or steward, the law only an assignee of A. stole from B. and B. stole the same property from A. is it a felony of theft? It is said it is a felony in B. for A. had acquired no property in the article.

Will your lordship in decide it, the case by which they are committed. If a man steal a horse and ride before Lord in county id. is theft there and in every county through which he rode. But if the horse stolen be taken before he was taken in, and then he could not be tried there.

1 Hawk. 14 What is a carrying away? Where a servant received to convert the property the bailee another is theft? A servant went into a field and bridled a horse and rode with it. Its lien was paid. This was holden to be theft, tho' it be lead and remained there.

Concealment is truth.

To where a man's treasure is, there his heart
had most been accustomed to dwell. The
mountain was hidden to the Israelites.

Moses veiled himself from the sight of
the people, and it shadowed in his face and
it was hidden to the truth. v. 318

The person who has ill-treated some
would this crime except a wife, who
must bear it as her husband's sin is
said if the wife authorises the proceeding
taken to a third person, who keeps it secret
and pursues this is not truth. This does
not include a taking from the wife
a taking from the husband.

The property must be personally enjoyed.
In this delicate time are some more
illustrations. If a man does in to another
or field, cuts down and carries away
his neighbour, this is not truth, if the tree and
were done advance. But if the carry
ing away was done after the fact it would be
truth. In this it was personal property.
So the estate of apples which are
cut from the tree is truth.

These are artificial distinctions, but they are
well established

384.

Theft.

At common law choses in action were not the
1 Hawk 142 subject of ~~theft~~ because not being [illegible] [illegible] they
8 Co. 33. were of no use to any one but the owner. But by
4 Bl. 234. Stat. in Eng. and in many of the States the com. law in that respect is altered.

This being a settled point a question arose whether at C. Law bank bills could be ~~stolen~~. It was at first contended [illegible] could be considered in any [illegible] theft to steal them. But as they are considered as money, I apprehend that without a statute it would be considered as theft to take them. Wherever there is a difference between choses in action and money bank bills are considered as money. If taken on execution they would not be [illegible] as the part of property.

7 Co. 18. Theft cannot be committed on [illegible] [illegible] while they [illegible] [illegible], always tho' sometimes they may be [illegible] to the owner. But the taking of them would be a trespass.

It is not theft to take fish where another has an exclusive right of fishing — for this is [illegible] the [illegible]
1 Haw. [illegible] [illegible] [illegible]. [illegible] if [illegible] [illegible] [illegible] in his [illegible] as in a [illegible] where the owner has placed them, it would be theft; for now the identical fish belonged to him who placed them there.

A man may steal his own goods, as where [illegible]
Cr El. 536. Hawk. 45 the bailee would [illegible] [illegible] to him, for the [illegible].

Larceny from the name of larceny is derived without the benefit of clergy. Grand larceny is allowed the benefit of clergy, and petit larceny not being punishable with death never ousted it.

Piracy

Piracy is called by Grotius robbery or depredation on robbery on the sea without authority to colour in war of the governments at war; with this every law that is is seen to the inimate or crew of the vessel if it is not piracy and robbery.

Bynkershoek 154.
4 B. 71.
2 Rolle 431.

Piracy not whether it is done upon the high seas by robbers or pirates. No person is accessory to piracy.

Piracy is a crime against the law of nations committed without authority. The culprit in all cases is tried except for a crime in the adjoining state.

Riots, Rout, affrays, and unlawful assemblies.

Riot and Rioting is a disturbance of the peace by three or more persons assembled together of their own kind with a determination to assist any body who appears them in the enterprise they are upon. Riot before must be of a tumultuous nature. It is. The mind actually exists. Riots in the road be rioting or rioting but is not rioting.

Third Count.

It would be a breach of the peace if one or more persons, in the middle of a field of their own land, if it were done from the hands or in consequence of an order of a superior, which is attempted to be carried into execution, or even affrayed with the other, for the purpose of injuring it.

2 Hawk. 293
4 Bl. 2. 146.
3. Bla. 43.
1. Ld. Ray. 565.
2. Hawk. 294.

There must be an entry upon a private nuisance carried into execution — and it should be exercised against the property of some individual. For if it be against the public in general, it will be a public nuisance or treason. If it is not so, it will constitute another offence. It should be done with violence, and that violence must be of a nature which tends to inspire terror. If the thing be unlawful but without violence, it would be no riot.

Dyer 414
Ib. 484
Ib. 184

6 Mod. 41.
9 Mod. 142.
Mod. 91.
1. Vent. 304.
3 Ib.

It is not material whether the entry was lawful or unlawful. If a man forcibly enters with company into his own field in opposition to the orders of another, the author of riot has been committed in the presence and with the public.

2 Mod. 3.
2. Show. 235.
1. Hawk. 290.

Second.

Proved in the same offence as in the second count in fact it is not necessary that the property should be executed, if it is attempted, that is all the difference. The riot, forcible entry and

include a rout. If 3 or more, a riot was punish'd with felony and a rout not.

Unlawful Assembly

An unlawful assembly is an offence similar to a riot and a rout. Occurring the proviso is not executed, nor attempted to be executed. It is not have and be of a quality, or a tendency to inspire terror.

But there may be an unlawful assembly when the persons only met together upon the execution of some proviso forcibly by force and riot. But where persons people met to defend a man in his own house against all comers, or in case of injury to be apprehended, in a peaceable manner, and with such circumstances calculated to inspire terror it is not an unlawful assembly.

Any public officer without any warrant or authority to command persons assembled in a riotous or disorderly manner to disperse and they are bound to obey him. Refusing will render him liable to imprisonment. And he has a right to call in the aid of the power of the county. Any private person, or number of private persons may step in and if he can do it command peace and the peace accordingly.

1 Bl. 140

1 Hawk 132

1 Bl. 142.

1 Salk 594. 1 Raym. 369 370.

5 Co. 70. 1 Mod. 110.

Roll. 1 121

The commonest [illegible] in [illegible] and is punishment and battery for a riot and fine and imprisonment for the other, but this is usually regarded as tortious.

Affray

This differs not from a common battery, it committed in the view of other persons. It is not necessary that more than two should be concerned in it. There was a distinction and Bow Bow, in the punishment of this offence from that of a common battery.

4 Bl 145

Breaches of the Peace.

All the crimes which have been enumerated are also breaches of the peace. But there are certain other offences which come more properly and peculiarly under this denomination.

Threatening and challenging may be named as breaches of the peace. Indeed words of menace, [illegible] in which the offence consists.

Any injury which arises to a man and of a riot or rout or else he a private action for redress. A man [illegible] against a [illegible] and when a man sues for a battery or assault of the common [illegible] to [illegible]

But surely the public can take care of their debtors, and a private recovery would be more to the public prosecution. So that if the injury is to the private person some creditor should be at his account. The offender must be indicted for a cheat, forgery. In these cases when the law covers and punishes the public offence there may be some specious reason for this argument.

Barretry

This is the exercise of others in the unjust and needless lawsuits either of one's own or by the entitlement of other persons. In the civil law when the suit brought the vexatious suit in no case became. There must have been two actions and have to make this a barratry in the civil the obtaining up of one an action could merely receive damages.

Every one who takes his case, is used of course a barrator. It must appear that the intention was to vex and trouble his adversary, or a claim made to harass the unfortunate either in law or equity. If the man believes in conscience, he has any right to recover that it is considered sometimes the is not a barretor. The principles of the action for vexatious lawsuit and of the prosecution for barretry are the same.

Dawk. 544 Feb. 84

Barratry

It is not always the subject matter, but sometimes the manner in which a remedy is sought will constitute an offence barratry: as if a man who has a trifling demand of a few pounds, sues and a writ of attachment for 500 £ so as to create a difficulty of procuring bail & this is making use of the law as a cloak for his own malignity.

But I have known a case where the object was more remote to wit to get money when the Ct gave a remedy in an action for malicious prosecution. A man had made a charge against a woman of chastity, which she knew well enough to be true. Nevertheless she brought an action of slander against him and on the facts being proved she was defeated in her action. The suit then brought an action for an action lies not — and continues to run, which in the opinion was holden entitled to a recovery.

The crime of barratry subjects the offender to fine and imprisonment — and he is also to be considered as guilty of the crime of perjury, or forgery, & disable him from being a witness.

Champerty

This is an offence at common law, and is the buying up of other people's law suits — as said

Jan. 28 1818. 3 days.

common law, to purchase of some notes, bonds, or other securities has formerly been the policy of this offence. But that common law is now done away, and another from experience, has supplied it, and where these are taken in the course of trade without the mischievous aim of oppressing or obtaining bills of costs from others, it is not criminal. The quo animo must be ascertained.

It never can be champerty to hand notes or portable instruments to persons to them.

If the securities are purchased for the purpose of oppression or making money out of the necessitous, by procuring an advantage and collecting the whole amount, it is still champerty. Disposition the law is not altered.

There is one species of Champerty which is distinguished from the other and is called by another name, viz. The purchasing of pretended titles to lands.

It makes no difference whether the title is good or not. A man who is actual possessor, cannot sell but to which he claims title except to him who in possession for it wants to have a lawsuit to increase his estate, which the law abhors. The common law was very hard and could not

to say, at all. It was also a common-law punishable by fine.

Cum [illegible] Pl. 87-88

There is now an English statute on the subject which we have accepted. By this statute the mere is subjected to not more than a fine — but lastly the value of the land. This gives a cumulative remedy. But avoids it strip it all to the offence.

Out of this a mixed question has arisen viz. Whether the mortgagee who has a title to land and is out of possession, while another is in, and claiming title, can sue it. A mortgage dispossessed is not within the object of this statute. It is not real property only in name. It will rather be a wife, not exported according to the object of Devises. The mortgage is merely a security for money which is personal property — to which the former is merely an incident. By this opinion Pl. was eventually a nonsuit of the 8d.

Cum 6 Ty 1 [illegible]

Usury.

Usury not only subjects the usurer to a loss of his property; it is also a crime. It is of two kinds. 1. where more is received than is lent as where on the loan of 100£ the lender takes a security for 112£. This is an crime which is punished by public prosecution. The 2d. is where

Note 2. The second species is the receiving more than lawful interest. This is a public offence. Upon conviction on a note of 100 £ the lender demands and receives 12 pounds and then is answer'd the interest &c. paid note. The borrower still remaining paid, he an offence is committed.

No contract, to receive too much interest, can constitute the crime, however there is very gen. identical. The moment too much is received, then it becomes an offence.

There may be cases when not only the contract shall be void — but the penalty shall be also incurred — as when not only the security is penal for two years & omit, but too much is also received.

The penalty for usury by the 12 Anne is double the value of the usurious contract.

Does the act lessen the interest and the same time?

It has been a question whether the receipt of more than legal interest is not evidence that the loan originally is contract of omit and receive more than the legal rate, and so avoid the calculation. I apprehend that it is not conclusive evidence of such an agreement, tho' it may render it probable and it is so settled.

Slander.

It is a very disputed question whether it
was lawful in our ancestors, the receiving
upon a slander upon a man's character the offence.
It is hard said it should come into consideration
the money paid? It is not so much an in-
terest money than the damage is made in our
rec. but the remedy is in words the
satisfaction is paid. The new construction of
Com. v. this statute is that too much was re-
Bax. Rep. covered. For certain offences is there between
Hawkins the time of fact and immediate expression
of 2d. and an original claim of 38 d. It
strikes me that the offence is not complete
till too much is taken, and here only too much
is received.

You have been some cases in which the
question has been whether the statute of limitations
had prevented the recovery. This depends
entirely upon ascertaining when too much
was received.

Libels.

The publication of a libel on a private person or of a private person
is an offence. It differs from slander in a
variety of things. It must be written or
printed or exhibited in signs and pictures.
Mere writings are libellous for which if not
true in fact no action would lie. as the
charging of a man with being a bad or

2 Will 403

There can be little whether a libel charges a person with a crime which subjects him to punishment or not — if it tends to make a man ridiculous or affects his reputation it is a libel, whether slander words be for the words or not.

In the private action there have been a question lately that the words spoken or written may be proved to be true. A libel of a private and of a public person are totally different in their operation.

A libel of a private person when the party is prosecuted or for an offence, cannot be purged by proving the truth. This is not a principle. The ground of the prosecution is the tendency which libels have to disturb the public peace — not for the injury of the individual. Still the truth of the facts are the libel or less tendency to disturb the public peace, than if they were false. For the trial will attain the truth may always be given in evidence. But the public prosecution rests on different reasons.

In when the administration of the government are libelled I have no doubt but that the truth of facts ought always, whether they had been executed or not, be given in evidence.

4 H. 50 — Dwi 352. The principle on which the [illegible] have been [illegible] that it behoves to bring the [illegible] [illegible] — not for fear of a breach of the peace. Since this principle is allowed, it will be most [illegible] all the evidence [illegible] of the measures of the persons charged are true, every one has a right to [illegible] them.

What can be better a libel against the government? The publishing of false, injurious things against them, when the corrupt motives are attributed to them as well?

A Government [illegible] in these cases be put in evidence, unless it be demanded upon the administration of the government, or corrupt motives.

This clause was inappropriately introduced with the Constitution and a clause allowing the truth to be given in evidence.

The punishment of fine imprisonment & as the case may be pillory — and finding sureties to keep the public peace.

These are certain writings which neither affect the government, or an individual but are merely libels on Truth. Now are these subjects there have been much misapprehension. The fair and sober discussion of truth has never subjected to centre to a prosecution.

It is those writings in which indecent practices are inculcated, and even are extenuated to prove them.

The question often turns upon the publication. For merely writing a book, and keeping it in libelored is not a publication.

But after it is published even one copy with a malicious design, gives occasion to it, and denominates it among his neighbours is guilty.

Cheating commonly now is known by the name of Swindling.

Where one man deprives another by false representations of his occasioned of truth this is merely a private injury.

But when one makes use of an artificial to put himself off for what he is not to gain credit — as if one should assume a false name or carry false letters of recommendation, this would amount to Cheating as an offence.

So if one makes use of false tokens or makes use of false weights and measures it is Cheating.

The punishment is fine and imprisonment in default of paying, and whipping.

The crime of adultery is only punished in England by excommunication from the ecclesiastical court, and by the Civil law, by fine & imprisonment. It is therefore considered as a crime.

In Connecticut we have a statute on this subject. This stat. punishes the offence only when committed with a married woman. It makes no difference whether the man is single or married. The principle is, that in the one case it gives a greater tendency to disturb domestic tranquillity, and to aggravate the offending.

The crime of adultery subjects the offender to be branded in the forehead with the letter A — and to wear a halter round his neck as long as he remained in the state. This is one of the old blue laws, and is certainly well calculated to answer the object, viz. the banishment of the offender.

Bigamy was always an offence at common law. It is, indeed, a moral offence against society. It is here punished in the same manner as adultery. After 7 years absence, a second marriage is allowable, if the person was unheard of.

[illegible]

A possessory action against adverse possession was made an offence.

[illegible] the rules for obtaining possession of the real property of a bankrupt, and concerning the writ of [illegible] and its effect.

The jurisdiction of magistrates in [illegible] to constitute the offence of forcible entry and detainer, to indemnify those who [illegible] to dispossess a person who has a title under a lease, [illegible] upon the lease.

A person who has acquired possession by a secret act and [illegible] may [illegible] an action to eject the intruder.

3 L. 256. Ch. 448. 2 L. 254 & 1814 [illegible] Ch. 99

A possessory action of ejectment under the [illegible] act [illegible] was [illegible] to the [illegible] question whether, on such a [illegible] and [illegible] which was possible, it would be [illegible] against the title. But it is a [illegible] of [illegible] action.

[illegible]

[illegible]

[illegible]

Treason.

[illegible] unauthorized or [illegible] may be justifiable if it be necessary as was the case of our glorious Revolution.

Never the forbearance is used, yet if it be just it is not a penal act, and may be done by some local community [illegible] treason.

An attempt to pull down all [illegible] government and throughout is [illegible] to be treason. It was a consideration against the original law of the land.

Men combining without any [illegible] or attempt to be [illegible] into effect is not treason.

[illegible] aid or assist [illegible] enemies [illegible] to the enemies is treason.

Dalton 29. Bell 27. Hawk 57. Read.

It has been observed to be treason to give Philip Addam and to a rebel who has stolen the King's horse is treason. [illegible] the law [illegible] and [illegible] in that case.

It is a crime however even [illegible] a common [illegible].

In the supreme magistrate is a complex [illegible] if he is supreme magistrate [illegible] it has been long settled that it is not treason to obey him.

Dalton 55. Words never constitute treason.

No writing not connected with an overt act of treason [illegible] adjudged 198
1 Hale 118.
1 Bac. 78.

been [illegible].

We are told there must be two witnesses to prove treason — that to every overt act of treason, [illegible] that there should be two witnesses to each. In this [illegible] differs from the [illegible]. It is said that misprision [illegible] should be admitted [illegible] as a witness [illegible] this [illegible] is not supported by authority, and [illegible] there is no reason for it.

Offences against Religion.

We have neither [illegible] nor Heresy, as known in the English law. The principle of punishing offences against religion is the disturbance which is given by them to society. Mere religious opinions which men may entertain will not subject them to punishment. On this principle there has been an entire revolution of sentiment.

Blasphemy is still punished as an offence. This crime is not defined by statute law, and of course we must resort to the English construction. It is the denying the being or providence of God: the contumelious reproaches of Christ — or the scoffing at the holy scriptures. This does not relate to a mere expression of an opinion on either of these subjects. It is the wanton ridicule and scurrility, which are calculated to wound the feelings of men in a christian country. It is no invasion of the rights of conscience. On the ground that this is the law in general, the [illegible] has a [illegible] to retain free [illegible] [illegible] sentiments of a different opinion.

Malicious mischief is punished by our law.

By this is meant [illegible] [illegible] which have a tendency to [illegible] [illegible] property. [illegible]

[illegible] society, [illegible] over all communities, incorporations and [illegible] power to levy taxes for support of the ministry.

Profanation of the Lord's Day is made a crime. The violation of certain parts of it is always regarded as under the protection of the civil power. Had the parliament [illegible] to decide and draw in doubt from Moses and Jesus, concerning the question, "Is Sunday a Christian institution?" it would be a common and [illegible] The observance of it is enacted by statute.

Profane cursing is an offence. Had Christ been considered as profane swearing and taken from the Jews and Romans, it would be so with the same thing as it would be cursing, and the quo animo must be taken into consideration. Should Christ appear this world he would be [illegible] by the name of the Christian God, or the Jupiter. In the latter case it would not be profane cursing to say Jupiter curse his God.

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